



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



\* \* See also Catalogue at end of this Work.

## VALUABLE LAW WORKS

PUBLISHED BY

# STEVENS AND SONS,

119, CHANCERY LANE, LONDON, W.C.

AUGUST, 1883.

**Prideaux's Precedents in Conveyancing.**—With Dissertations on its Law and Practice. *Twelfth Edition.* Thoroughly revised and adapted to the Conveyancing Acts, 1831, 1882, the Settled Land Act, 1882, the Married Women's Property Act, 1882, and the Bills of Sale Act, 1882. By FREDERICK PRIDEAUX, late Professor of the Law of Real and Personal Property to the Inns of Court, and JOHN WHITCOMBE, of Lincoln's Inn, Esqrs., Barristers-at-Law. 2 vols. Royal 8vo. 1883. Price 3l. 10s. cloth.

"The most useful work out on Conveyancing."—*Law Journal.*

"This work is accurate, concise, clear and comprehensive in scope, and we know of no treatise upon conveyancing which is so generally useful to the practitioner."—*Law Times*, March, 24, 1883.

**Chitty's Index to all the Reported Cases** decided in the several Courts of Equity in England, the Privy Council, and the House of Lords, with a selection of Irish Cases, on or relating to the Principles, Pleading, and Practice of Equity and Bankruptcy; from the earliest period. The *Fourth Edition*, wholly revised, reclassified and brought down to the date of publication by WILLIAM FRANK JONES, B.C.L., M.A., and HENRY EDWARD HIRST, B.C.L., M.A., both of Lincoln's Inn, Esqrs., Barristers-at-Law. Vol. I. Royal 8vo. 1883. Price 1l. 11s. 6d. cloth. [Ready next month.]

\* \* Volume I. contains the Titles "Abandonment" to "Bankruptcy." The Title Bankruptcy is a Complete Digest of all cases, including the Decisions at Common Law. Volume II. is in active preparation, and will shortly follow.

**Pitt-Lewis' County Court Practice.**—A Complete Practice of the County Courts, including Admiralty and Bankruptcy, embodying the Acts, Rules, Forms and Costs, with Additional Forms and a Full Index. *Second Edition.* By G. PITT-LEWIS, sometime Holder of the Studentship of the Four Inns of Court, assisted by H. A. DE COLYAR, Esqrs., Barristers-at-Law. In 2 vols. Demy 8vo. 1883. Price 2l. 10s. cloth.

\* \* This Edition deals fully with the Employers' Liability Act, and is the only County Court Practice which contains the County Courts (Costs and Salaries) Act, 1882, the important legislation (as to Married Women's Property, Bills of Sale, Inferior Courts Judgments, &c.) of the Session of 1882, and also the County Court Rules of March, 1883.

"One of the best books of practice which is to be found in our legal literature."—*Law Times.*

**Whiteway's Hints on Practice;** being Practical Notes to the Judicature Acts, Orders, Rules and Regulations of the Supreme Court. Illustrated by the Latest Cases. Together with the Rules of the Supreme Court, 1883. With Introduction and Notes. By A. R. WHITEWAY, M.A., Trinity College, Cambridge, of the Equity Bar and Midland Circuit, Author of "Hints to Solicitors." *Second Edition.* Royal 12mo. 1883. Price 14s. cloth.

(Nearly ready.)

\* \* The Rules, edited with Notes, Cross References, and Index, sold separately. Price 7/6, in limp leather.

**Reports of Trials for Murder by Poisoning; by Prusic Acid,** Strychnia, Antimony, Arsenic, and Aconitine; including the trials of Tawell, W. Palmer, Dove, Madeline Smith, Dr. Pritchard, Smethurst, and Dr. Lamson. With Chemical Introduction and Notes on the Poisons used. By G. LATHOM BROWNE, of the Midland Circuit, Barrister-at-Law, Author of "Narratives of State Trials in the Nineteenth Century," and C. G. STEWART, Senior Assistant in the Laboratory of St. Thomas's Hospital, Associate of the Royal College of Science, Dublin; and of the Society of Public Analysts. Demy 8vo. 1883. Price 12s. 6d. cloth.

**Rules of the Supreme Court, 1883,** (official copy), with an Index by M. D. CHALMERS and M. MUIR MACKENZIE, Esqrs., Barristers-at-Law, Editors of "Wilson's Judicature Acts." Price 4s. 6d. net, sewed. Sold separately, Rules, 2s. 2d., Index, 2s. 6d.

\* \* A Catalogue of Modern

lettered, price 6d. post free.

STEVENS AND SONS, 119, CHANCERY LANE, LONDON, W.O.

**Addison's Treatise on the Law of Contracts.—Eighth Edition.**

By HORACE SMITH, Esq., Barrister-at-Law, Recorder of Lincoln. Author of "The Law of Negligence," &c. Royal 8vo. 1883. (1600 pp.) Price 2l. 10s. cloth.  
 "To the present editor must be given all praise which untiring industry and intelligent research can command. He has presented the profession with the law brought down to the present date, clearly and fully stated."—*Law Times*.

**Macdonell's Law of Master and Servant.—Part I, Common**

Law. Part II, Statute Law. By JOHN MACDONELL, M.A., Esq., Barrister-at-Law, of the South Eastern Circuit. Demy 8vo. 1883. Price 1l. 5s. cloth.

"Mr. Macdonell has done his work thoroughly and well. He has evidently bestowed great care and labour on his task, and has, therefore, produced a work which will be of real value to the practitioner."—*Law Times*, Jan. 27, 1883.

**Humphry's Common Precedents in Conveyancing; to-**

gether with the Conveyancing Acts, 1881—82, and the Settled Land Act, 1882, and other Acts to which the Precedents have been adapted, with an Introduction and Notes. Second Edition. By HUGH M. HUMPHRY, M.A., Barrister-at-Law. Demy 8vo. 1882. Price 12s. 6d. cloth.

"A work that we think the profession will appreciate."—*Law Times*, December 23, 1882.

**Shirley's Selection of Leading Cases in the Common Law.**

By W. SHIRLEY SHIRLEY, M.A., B.C.L., Esq., Barrister-at-Law. Second Edition. Demy 8vo. 1883. Price 15s. cloth.

"The selection is very large, though all are distinctly 'leading cases,' and the notes are by no means the least meritorious part of the work."—*Law Journal*.

**Wharton's Law Lexicon.—Forming an Epitome of the**

Law of England, and containing full explanations of the Technical Terms and Phrases thereof, both Ancient and Modern, including the various Legal Terms used in Commercial Business. Together with a Translation of the Latin Maxims and Selected Titles from the Civil, Scotch, and Indian Law. The Seventh Edition. By J. M. LELY, Esq., M.A., Barrister-at-Law. Super-Royal 8vo. 1883. Price 1l. 18s. cloth.

"On almost every point both student and practitioner can gather information from this valuable book, which ought to be in every lawyer's office."—*Gibson's Law Notes*, May 1883.

**Daniell's Practice of the Chancery Division of the High**

Court of Justice, and on Appeal therefrom; being the Sixth Edition of Daniell's Chancery Practice, with alterations and additions, and References to a companion volume of Forms. By LEONARD FIELD, EDWARD CLENNELL DUNN, and THEODORE RIBTON, assisted by WILLIAM HENRY UPJOHN, Barristers-at-Law. Vol. I. (with Table of Cases and an Index). Demy 8vo. 1882. Price 2l. 2s. cloth.

\* \* Volume II. in the press, and will be published shortly.

"A concise and careful digest of the practice."—*Solicitors' Journal*.

**Middleton's Statutes relating to Settled Estates, including**

the Settled Estates Act, 1877, and the Settled Estates Act Orders, 1878, and Settled Land Act, 1882, Improvement of Land Act, 1864, and the Limited Owners' Residences Act, 1870 and 1871. With Introduction, Notes and Forms. Third Edition, with Appendix of Rules and Forms under the Settled Land Act, 1882. By JAMES W. MIDDLETON, B.A., Barrister-at-Law. Royal 12mo. 1882. Price 7s. 6d. cloth.

"Mr. Middleton's remarks are specially to be commended. . . . The book is intended for the legal adviser and equity draftsman, and to these it will give considerable assistance."—*Law Times*.

**Russell's Arbitration and Award.—A Treatise on the**

Power and Duty of an Arbitrator, and the Law of Submissions and Awards. With an Appendix of Forms and of the Statutes relating to Arbitration. By FRANCIS RUSSELL, Esq., M.A., Barrister-at-Law. Sixth Edition. By the AUTHOR and HERBERT RUSSELL, Esq., Barrister-at-Law. Royal 8vo. 1882. Price 1l. 16s.

"This edition may be commended to the profession as comprehensive, accurate and practical."—*Solicitors' Journal*, January 13, 1883.

**Lely's Law of Municipal Corporations.—The Municipal**

Corporation Act, 1882; the Enactments incorporated therewith, and a selection of Enactments supplementary thereto. With Introduction, Explanatory Notes and Index. By J. M. LELY, Esq., Barrister-at-Law, Editor of "Chitty's Statutes," &c., &c. Demy 8vo. 1882. Price 15s. cloth.

"The summary is tersely written, and the Notes appear to be to the point. Nothing required for the due understanding and working of the Acts seems to be absent."—*Law Journal*.

**Turner's Duties of Solicitor to Client as to Sales, Purchases,**

and Mortgages of Land. By EDWARD F. TURNER, Solicitor, Lecturer on Real Property and Conveyancing, and one of the Assistant Examiners for Honours to the Incorporated Law Society for 1882-3. (Published by permission of the Incorporated Law Society). Demy 8vo. 1883. Price 10s. 6d. cloth.



L.Eng.A.63. e. 26

**OW.U.K.**

**X675**

H424a

THE  
HONOURS EXAMINATION  
DIGEST;

COMPRISING ALL THE QUESTIONS IN  
Conveyancing, Equity, Common Law, Bankruptcy, Probate,  
Divorce, Admiralty and Ecclesiastical Law and Practice  
ASKED AT THE SOLICITORS' HONOURS EXAMINATIONS SINCE  
THEIR ESTABLISHMENT TO THE PRESENT TIME.  
WITH THE ANSWERS THERETO.

BY  
JOHN F. HAYNES, LL.D.,  
AUTHOR OF "HAYNES'S CHANCERY PRACTICE," "THE STUDENT'S STATUTES," ETC., ETC.

AND  
THOMAS A. NELHAM,  
SOLICITOR (HONOURS).



LONDON:  
STEVENS AND SONS, 119, CHANCERY LANE,  
Law Publishers and Booksellers.  
1883.

LONDON :  
PRINTED BY W. I. RICHARDSON, 4 AND 5, GREAT QUEEN STREET,  
LINCOLN'S INN FIELDS, W.C.

## PREFACE.

---

THE idea which led to the Law Institution establishing an independent examination for Solicitors desiring to obtain Honours, about the same time as they are passing their Final Examination, was no doubt a good one, and shows that that Institution is to some extent at least keeping pace with the times. But after we have carefully, as far as our time permitted, answered the whole of the questions in all the subjects asked at this examination during more than three years, we are compelled candidly to give it as our opinion that this Honours Examination, excellent as it is, is still capable of many improvements. For instance, the examinations are not all uniformly difficult, and consequently a second or third class man at one examination is not unlikely to be a better man than a first class man at another examination. Again, the questions are in too many cases very far-fetched, and of such a character that it is to be feared that very few, if any, of our leading Counsel or Solicitors could answer them correctly from memory alone. Again, some of the questions are very long, and yet involve but simple answers; whilst others are so intricate that it takes a student a much longer time to answer them satisfactorily than ought to be the case.

Having said so much on the one side, we think it only fair to add that really good men who have gone in for Honours and deserved them, have, as far as our experience has gone, as a general rule, been successful.

We think, however, that the defects in the questions, some of which we have endeavoured to point out above, will easily

be remedied if the examiners will have the goodness to make them such that they will bring out the knowledge of deeply versed students, and send empty away, so far as Honours are concerned, those students who are mere hotbeds of law crammed up with recent cases and statutes, in addition to the leading principles of the law.

We would here warn those students who contemplate using this work as a cram book that it will be useless as such, and would inform them that not more than eight or a dozen questions altogether have been repeated in another form at a subsequent examination.

This book notices throughout all the modern leading cases and statutes, and is the first of the kind which embraces Criminal Law and Practice, Bankruptcy Law and Practice, Probate and Divorce Law and Practice, and Admiralty and Ecclesiastical Law and Practice.

The January Questions came out after the book had been almost completely written and arranged, and are therefore answered in Appendix A., and just as we are going to press the April Questions are ready, so we have thought it best to add them in Appendix B.

If a Second Edition should be required, the later questions will be incorporated in the text and answered, and a few of the other questions will be answered more fully.

We have here to thank the authors of the works referred to in the answers for the use we have made of their works, which are those most generally used by the profession and students; and at the same time any assistance derived from the study of other works is here gratefully acknowledged.

J. F. H.

T. A. N.

7 GRAY'S INN PLACE, LONDON, W.C.

*July, 1883.*

## TABLE OF CONTENTS.

---

PREFACE . . . . .	iii
TABLE OF CONTENTS . . . . .	v
HONOURS RULES . . . . .	ix
TABLE OF STATUTES . . . . .	xi
TABLE OF CASES . . . . .	xiii

### PART I.

**THE PRINCIPLES OF THE LAW OF REAL AND PERSONAL PROPERTY, AND THE PRACTICE OF CONVEYANCING; THE LAW, PRACTICE, AND PROCEDURE OF THE CHANCERY DIVISION; AND THE LAW, PRACTICE, AND PROCEDURE OF THE QUEEN'S BENCH DIVISION, AND OF THE COURT OF BANKRUPTCY.**

	PAGES
ADMINISTRATION OF ASSETS . . . . .	1—6
APPROPRIATION OF PAYMENTS . . . . .	6—8
BANKRUPTCY. . . . .	8—16
BILLS OF EXCHANGE AND PROMISSORY NOTES . . . . .	17—18
BILLS OF SALE . . . . .	18—19
CARRIERS . . . . .	19—21
CHARITIES . . . . .	21—23
CHEQUES . . . . .	25—26
COMPANIES . . . . .	27—37
CONDITIONS . . . . .	38—39
CONSTITUTIONAL LAW . . . . .	39—40
CONTRACTS . . . . .	40—44
CONVERSION . . . . .	44—47
COPYHOLDS . . . . .	47
CUSTOM OF TRADE . . . . .	48
DAMAGES . . . . .	48—49
DISCONTINUANCE . . . . .	50
DISTRIBUTION (Statutes of) . . . . .	50—51
DONATIONES MORTIS CAUSÆ . . . . .	51—52
DOWER . . . . .	52—54
ELECTION . . . . .	54—57

	PAGES
ESTATES TAIL . . . . .	57—58
EXECUTORS AND ADMINISTRATORS . . . . .	59—60
EXECUTORY BEQUESTS . . . . .	60—61
FAMILY COMPROMISES . . . . .	61
FRAUD . . . . .	62—63
GUARANTEES . . . . .	64
GUARDIAN AND WARD . . . . .	65—66
HUSBAND AND WIFE . . . . .	66—79
INCORPOREAL HEREDITAMENTS . . . . .	79—80
INHERITANCE . . . . .	80—84
LANDLORD AND TENANT . . . . .	84—86
LEASES . . . . .	86—91
LEGACIES . . . . .	91—98
LIBEL . . . . .	98—99
LIENS . . . . .	99—101
LIMITATIONS OF ACTIONS . . . . .	101—104
MAINTENANCE . . . . .	104
MASTER AND SERVANT . . . . .	105—109
MAXIMS . . . . .	109—111
MERCANTILE LAW . . . . .	111—119
MISREPRESENTATION . . . . .	119—122
MORTGAGES . . . . .	122—130
NEGLIGENCE . . . . .	130—133
NEIGHBOURING PROPRIETORS . . . . .	133—135
NOTICE . . . . .	135—136
NUISANCES . . . . .	136—138
PARTITION . . . . .	138—141
PARTNERSHIP . . . . .	142—148
PATENT RIGHTS . . . . .	148—149
PENALTIES AND FORFEITURES . . . . .	149
POWERS . . . . .	150—162
PRACTICE OF THE SUPREME COURT . . . . .	162—178
PREScription . . . . .	178—181
PRINCIPAL AND AGENT . . . . .	182—186
PRINCIPAL AND SURETY . . . . .	186—188
REGISTRATION OF TITLE . . . . .	188—189
RELEASE . . . . .	189—190
REMAINDERS . . . . .	190—194
REVERSIONARY INTERESTS . . . . .	194—196
SATISFACTION . . . . .	196—197
SEPARATION DEEDS . . . . .	197—199
SETTLED ESTATES . . . . .	199—202
SETTLEMENTS AND VOLUNTARY DISPOSITIONS . . . . .	202—206

# TABLE OF CONTENTS.

vii

	PAGES
SPECIFIC PERFORMANCE . . . . .	207—212
SUCCESSION DUTY . . . . .	212
TECHNICAL EXPRESSIONS . . . . .	212—213
TITHE RENT-CHARGE . . . . .	214—215
TRUSTEES . . . . .	215—220
UNDUE INFLUENCE . . . . .	220—221
USES AND TRUSTS . . . . .	221—231
VENDOR AND PURCHASER . . . . .	231—242
WILLS . . . . .	242—249

## PART II.

ADMIRALTY . . . . .	300—310
CRIMINAL LAW . . . . .	251—277
DIVORCE . . . . .	287—300
ECCLESIASTICAL LAW . . . . .	310—320
PROBATE . . . . .	277—287

APPENDIX A . . . . .	321—373
APPENDIX B . . . . .	375—382

INDEX . . . . .	393
-----------------	-----





## RULES MADE BY THE INCORPORATED LAW SOCIETY FOR THE HONOURS EXAMINATION.

Terms used in these Rules have (unless inconsistent with the context) the same meanings as they have in the Regulations made by the Society on the 27th November, 1877, as to the Preliminary, Intermediate, and Final Examination of persons intending to become Solicitors of the Supreme Court (hereinafter referred to as "the Regulations").

1. No honorary distinction (except local prizes already instituted) will be awarded by the Society to any candidate in respect only of the Final Examination. All honorary distinctions awarded by the Society will—with the exception mentioned—be awarded to candidates who pass the Honours Examination as hereinafter mentioned.

2. There shall be held in the hall of the Society, or in such other place as the Council may from time to time appoint, four voluntary Examinations for Honours in each year. The Examinations shall take place on such days as the Council may from time to time appoint.

3. The Examination Committee shall, with the assistance (so far as they may think proper to resort to the same) of the Examiner or Examiners to be appointed for the purpose by the Council, conduct the Honours Examinations.

4. The Council may, from time to time, by resolution, appoint such competent person or competent persons as they may see fit to be an Examiner or Examiners to assist the Committee in the Honours Examination, and the Council may at pleasure remove any Examiner so appointed.

5. There shall be paid to every Examiner so appointed, not being a member of the Committee or of the Council, such remuneration as the Council may from time to time, by resolution, prescribe.

6. The Honours Examination shall be open to all candidates *without reference to age*, and shall be on the subjects specified for the final examinations in the Regulations.

7. Every candidate who is eligible and desirous to compete for honours shall, at the time when he gives notice of his desire to be examined at any Final Examination, give notice in writing of his desire to be examined for honours. Forms of notice can be obtained at the office of the Society.

8. At each Honours Examination the candidates who, in the opinion of the Committee, are deserving of honorary distinction will be arranged in three classes; and, in awarding honorary distinction, the marks obtained in the Honours Examination will alone be considered, except in cases of equality, or approximate equality, when the Final Examination papers may be taken into consideration.

9. The names of candidates placed in the first class will be arranged in order of merit, and every candidate placed in that class will, in addition to a class certificate, receive a prize.

The names of candidates placed in the second and third classes respectively will be arranged alphabetically, and every candidate placed in those classes will receive a class certificate.

The certificate will be in the following or an equivalent form :

Honours Examination.  
By Authority of the Council of  
The Incorporated Law Society  
of the United Kingdom.  
I do hereby certify  
that  
at the Honours Examination  
held on the                      day of                      188  
who served his Articles of Clerkship to  
was placed in the first [second or third] class.

, *President.*

10. The names of all candidates who attain honorary distinction will be printed in the Society's Calendar.

11. At each Honours Examination the following prizes will be awarded, unless in the opinion of the Committee the standard attained should not justify the issue of any first-class list :—The Clement's Inn Prize (value £10 10s.); The Clifford's Inn Prize (value £5 5s.); and the New Inn Prize (value £5 5s.); or an additional Society's Prize of like value; and the Daniel Reardon Prize, being the one fourth part of the dividend on £3,333 6s. 8d. Consolidated Bank Annuities. In addition, the Society will give as many prizes (value £5 5s. each) as are required. The value of each prize will be expended by the Society in the purchase of legal, historical, or constitutional works, to be selected by the successful candidate, and such works will be bound at the expense of the Society, and be stamped with the arms of the Society.

12. In addition the following prizes will be awarded according to the result of the Honours Examinations during the year, namely :—

The Scott Prize, being the dividend on £1,265 Preferential  $4\frac{1}{2}$  per Cent. London, Brighton, and South Coast Railway Co.'s Stock (1863).

The Broderip Gold Medal, to be purchased with the dividend on £333 6s. 8d. Reduced Annuities.

N.B.—Since the above Rules were made it has been resolved that each Honours Candidate shall pay an extra fee of £1 upon giving his notice.

# TABLE OF STATUTES.

	PAGE		PAGE
8 Hen. VI. c. 9 . . . . .	362	1 Vict. c. 26 (Wills Act, 1833) . . . . .	3, 93,
36 Hen. VI. c. 20, 21 . . . . .	326	156, 244, 246, 248, 330	
31 Hen. VIII. c. 1 . . . . .	242	— c. 27 . . . . .	161
32 Hen. VIII. and 34 Hen. VIII. . . . .	43, 243	1 & 2 Vict. c. 106 . . . . .	313, 371
13 Eliz. c. 5 . . . . .	204, 326	— c. 110 . . . . .	174, 237
27 Eliz. c. 4 . . . . .	204, 326	2 & 3 Vict. c. 11 . . . . .	237
21 Jac. I. c. 16 . . . . .	101	3 & 4 Vict. c. 82 . . . . .	237
22 & 23 Car. II. c. 10 . . . . .	51	— c. 65 . . . . .	304, 307
29 Car. II. c. 3 . . . . .	43, 243	— c. 86 . . . . .	318, 319
1 Jac. II. c. 17 . . . . .	51	5 & 6 Vict. c. 27 . . . . .	371
7 Anne, c. 5 . . . . .	332	— c. 108 . . . . .	371
4 Geo. II. c. 21 . . . . .	332	6 & 7 Vict. c. 96 . . . . .	99
9 Geo. II. c. 36 . . . . .	21, 22	8 & 9 Vict. c. 106 . . . . .	50, 87, 194
11 Geo. II. c. 19 . . . . .	123	— c. 109 . . . . .	184, 185
13 Geo. III. c. 21 . . . . .	332	— c. 118 . . . . .	232
19 Geo. III. c. 21 . . . . .	362	11 & 12 Vict. c. 43 . . . . .	362, 363
36 Geo. III. c. 21 . . . . .	364	13 & 14 Vict. c. 60 . . . . .	139, 234
58 Geo. III. c. 45 . . . . .	313	14 & 15 Vict. c. 25 . . . . .	87
5 Geo. IV. c. 83 . . . . .	362	15 & 16 Vict. c. 51 . . . . .	232
7 & 8 Geo. IV. c. 29 . . . . .	240	— c. 55 . . . . .	139, 234
9 Geo. IV. c. 14 . . . . .	63	— c. 76 . . . . .	177, 353
9 & 10 Will. III. c. 15 . . . . .	354, 355	— c. 83 . . . . .	149
1 Will. IV. c. 40 (Lord St. Leonard's Act) . . . . .	245, 246	— c. 86 . . . . .	130
1 Will. IV. c. 46 . . . . .	153	16 & 17 Vict. c. 30 . . . . .	267
2 & 3 Will. IV. c. 71 (Pre-scription Act, 1832) . . . . .	80, 138, 179	— c. 51 . . . . .	212, 365
3 & 4 Will. IV. c. 27 . . . . .	50	— c. 59 . . . . .	25
— c. 42 . . . . .	101	— c. 70 . . . . .	235
— c. 74, 50, 57, 58, 67, 68, 70, 74, 234, 235		— c. 96 . . . . .	235
— c. 105 . . . . .	53	— c. 137 . . . . .	21
— c. 106 . . . . .	1, 80, 81, 83, 84, 213	— c. 170 . . . . .	235
5 & 6 Will. IV. c. 50 . . . . .	362	17 & 18 Vict. c. 36 . . . . .	14
6 & 7 Will. IV. c. 71 . . . . .	214	— c. 104 . . . . .	301, 302, 304, 309
		— c. 112 . . . . .	21
		— c. 113 . . . . .	127
		— c. 125 . . . . .	167, 355
		18 & 19 Vict. c. 15 . . . . .	237
		— c. 124 . . . . .	21

	PAGE		PAGE
19 & 20 Vict. c. 97	64, 102	34 & 35 Vict. c. 84	202
— c. 104	315	35 & 36 Vict. c. 24	22
20 & 21 Vict. c. 57	57, 58	36 & 37 Vict. c. 66 (Jud. Act,	
— c. 77	73, 284, 286,	1873) 95, 164, 176, 177, 226, 294	
	334, 356	37 & 38 Vict. c. 37	154
— c. 85	289, 294, 365	— c. 57	101, 227, 334
21 & 22 Vict. c. 57	371	— c. 62	9
— c. 94	232	— c. 78	74
22 & 23 Vict. c. 35	149, 219, 237, 240	— c. 85	319, 320
— c. 61	294	38 & 39 Vict. c. 77 (Jud. Act,	
23 Vict. c. 15	364	1875) 2, 4, 35, 345	
23 & 24 Vict. c. 38	221, 237	38 & 39 Vict. c. 86	257
— c. 126	149, 353	— c. 87	188
— c. 136	21	— c. 123	237
— c. 144	294, 297, 298	40 & 41 Vict. c. 14	296
— c. 145	129, 216, 240	— c. 18. 87, 199, 204, 209	
24 Vict. c. 9	21	— c. 26	29
— c. 10	304, 307	— c. 33	190, 191, 194
24 & 25 Vict. c. 96	240, 361	— c. 34	127
25 Vict. c. 17	21	— c. 39	116
25 & 26 Vict. c. 53	188	41 Vict. c. 19	295, 371, 398
— c. 63	366	41 & 42 Vict. c. 31. 14, 16, 129, 204, 326	
— c. 67	188	42 Vict. c. 1	166
— c. 89	27, 28, 32,	42 & 43 Vict. c. 49	268, 274
	33, 35, 143	— c. 76	30, 143
26 & 27 Vict. c. 93	362	43 Vict. c. 19	30, 143
— c. 106	21	44 Vict. c. 12	365
27 Vict. c. 13	21	44 & 45 Vict. c. 21	78
27 & 28 Vict. c. 112	237	— c. 24	274
— c. 114	20, 102, 237	— c. 41 (Convey-	
28 & 29 Vict. c. 86	146, 148	ancing Act, 1881) 57, 67, 104,	
29 & 30 Vict. c. 32	365	124, 125, 126, 129, 136, 149,	
— c. 57	21	151, 159, 204, 215, 216, 218,	
— c. 96	14	219, 220, 232, 239, 321, 353	
20 & 31 Vict. c. 48	321	44 & 45 Vict. c. 42	106
— c. 69	127	— c. 44	221
— c. 131	28, 31	— c. 60	263
31 Vict. c. 4	194, 195	— c. 68	177
31 & 32 Vict. c. 40	139, 140	45 & 46 Vict. c. 38 (Settled	
— c. 44	21, 22	Land Act, 1882)...87, 202, 204, 209,	
— c. 86	117	216, 239, 240, 325	
32 & 33 Vict. c. 68	296	45 & 46 Vict. c. 39 (Convey-	
— c. 71	10, 11, 12, 13, 14,	ancing Act, 1882) 86, 159, 239	
	15, 88, 90, 173,	45 & 46 Vict. c. 43 (Bills of	
	175, 204, 326	Sale Act, 1878) 14, 16, 326, 354	
— c. 94	315	45 & 46 Vict. c. 61 (Bills of	
— c. 110	22	Exchange Act, 1882)...17, 18, 25,	
33 & 34 Vict. c. 34	22	26, 103, 274	
— c. 56	200, 202, 237	45 & 46 Vict. c. 75 (Married	
— c. 93	281	Woman's Property Act,	
34 Vict. c. 13	22	1882) 66, 68, 70, 71, 73, 74, 76,	
34 & 35 Vict. c. 33	314	78, 141, 198, 247, 248, 259,	
— c. 43	370	234, 281, 296, 339, 376	

---

## PAGE

Backhouse v. Bonomi . . . . .	103
Bagot v. Legge . . . . .	329
Baines v. Bromley . . . . .	172
Bailey v. Piper . . . . .	337
Baker v. Baker . . . . .	290
—— v. Gray . . . . .	124
—— <i>Ec parte, Re</i> Bullman . . . . .	17
Baldwin v. Rogers . . . . .	329
Balm v. Balm . . . . .	328
Banco de Lima v. The Anglo-Peruvian Bank . . . . .	113
Banks v. Sutton . . . . .	83
Barber v. Gregson . . . . .	72, 73
Barker v. Cox . . . . .	338
Barnes v. Raester . . . . .	127, 344
Barrington v. Tristram . . . . .	328
Barry v. Harding . . . . .	248
Barrow, <i>Ec parte, Re</i> Andrews . . . . .	13
—— v. Barrow . . . . .	56
Bassett v. Nosworthy . . . . .	236, 238
Bastow and Co., <i>Re</i> . . . . .	33
Bateman v. Gray . . . . .	328
Battanshaw v. Martin . . . . .	70
Batthyany v. Bouch . . . . .	305
Baum, <i>Ec parte, Re</i> Edwards . . . . .	12
—— <i>Re, Re parte</i> Cooper (1) . . . . .	19
Bealand v. Bradley . . . . .	342
Bellett, <i>Re, Re parte</i> Crosbie . . . . .	15



## TABLE OF CASES.

XV

	PAGE
Corner v. Shaw . . .	351
Corser v. Cartwright . . .	335
Cowing v. Cowing and Wollen . . .	295
Cox v. Hickman . . . 142, 146,	148
Crisp v. Martin . . .	315
Crooke v. De Vandes . . .	246
Crosbie, <i>Ex parte</i> , <i>Re</i> Bedell . . .	15
Crosby v. Wadsworth . . .	41
Croydon Commercial Gas and Coke Co., The, v. Dickinson . . .	187
Crus, The . . .	367
Cummins v. Fletcher . . .	126
Cunninghame v. Anstruther . . .	155
Curteis v. Wormald . . .	339
Curtius v. The Caledonian Fire and Life Insurance Co. . .	130

## D.

DALHOUSIE v. M'Donall . . .	331
Daly, <i>In re</i> . . .	331
D'Aquilar v. D'Aquilar . . .	291
Davidson v. Dallas . . . 328,	329
— <i>Re</i> . . .	339
— v. Trimmer . . .	339
Davies' Trusts . . .	156
— v. Mann . . .	131
Davis v. Treharne . . .	88
Dawson v. Bank of White- haven . . .	54
Debenham and another v. Mellon . . .	79
De Geer v. Stone . . .	332
Delhuse, <i>Ex parte</i> , <i>Re</i> Mege- vand . . .	148
Dent v. Bennett . . .	342
Deposit Life Assurance Co. v. Ayscough . . .	348
Dering v. Earl of Winchelsea . . .	187
Dicks v. Lambert . . .	248
Downes v. Ship . . .	347
Dudsen's Contract . . .	58
Dunnidge v. White . . .	111
Durant v. Durant . . . 291,	292
Dyer v. Dyer . . . 225,	227, 228

## E.

EARLE, <i>Re</i> . . .	325
Eastwood v. Kenyon . . .	64

	PAGE
East and West India Dock Co. v. Hill . . .	89, 91
Eaton v. Benett . . .	343
Ebbs v. Boulnois . . .	11
Eddowes v. Eddowes . . .	328
Edwards, <i>Re</i> , <i>Ex parte</i> Baum — <i>Re</i> , <i>Ex parte</i> Chal- mers . . .	12
Edwin, The . . .	308
Eglinton, The Earl of . . .	302
Ella A. Clerk, The . . .	300
Elliot v. Davenport . . .	94
— v. Elliot . . .	328
— v. Merryman . . .	240
Ellis v. Barker . . .	111
Ellison v. Ellison . . .	327
Elwes v. Elwes . . .	343
Emmins v. Bradford . . .	159
Enchantress, The . . .	366
European Bank, <i>Ex parte</i> , <i>Re</i> The Oriental Commercial Bank . . .	18
Evans, <i>Ex parte</i> , <i>Re</i> Watkins . . .	173
Eyles v. Ellis . . .	449

## F.

FAGO v. Lee . . .	318
Farina v. Horne . . .	44
Favene v. Bennett . . .	354
Feronia, The . . .	309
Firefly, The . . .	366
Fisher and Co. v. Apollinaris Co. . .	264
Fitch v. Jones . . .	185
— v. Webber . . .	229
Fletcher v. Ashburner . . . 44,	45
— v. Rylands . . .	134
Flight v. Bolland . . .	211
Florence, The . . .	302
Flying Fish, The . . .	303
Forth v. Stanton . . .	64
Foulkes v. The Metropolitan District Ry. Co. . .	132
Fowler v. Barstow . . .	165
Fox v. Fox . . .	96
Frampton v. Stephens . . .	53
Francis v. Cockrell . . .	133
Franconia, The . . .	304
Frank v. Frank . . .	56
French v. Caddell . . .	329



	PAGE		PAGE
Furness v. Booth . . . .	217	Hardy, <i>Re</i> , Wells v. Barwick	95
Fussell, <i>Re</i> , <i>Ex parte</i> Allen .	89, 90	Harris v. Gamble . . . .	217
		— v. Truman, Hanbury	
		& Co. . . . .	254
G.		Harter v. Coleman . . . .	124
GANDY v. Gandy . . . .	199, 292	Harvey v. Farnie . . . .	331
Ganges, The . . . . .	366	— v. Mount . . . . .	342
Garbund v. Mayot . . . .	328	Hawes, <i>Re</i> , <i>Ex parte</i> Sadler .	89
Gardner v. Parker . . . .	52	— v. Wyatt . . . . .	342
Garrard v. Lauderdale . .	231	Hawkesley v. Bradshaw . .	168
Garrud, <i>Re</i> , <i>Ex parte</i> Newitt .	16	Haynes v. Haynes . . . .	47
General Financial Bank, <i>Re</i> .	34	Heathe v. Heathe . . . .	328
Gibbs v. Guild . . . . .	104, 227	Heilbutt v. Hickson . . . .	241
Gilbert v. Guignon . . . .	113	Helen and George, The . . .	367
Gillman v. Daunt . . . . .	328	Heritage v. Payne . . . .	36
Glenorchy, Lord v. Bosville .	343	Hill, <i>Re</i> , Hill v. Hill . . . .	217
Gordon v. Calvert . . . . .	188	— v. Chapman . . . . .	329
— v. Gordon . . . . .	61, 111	Hinchinbroke v. Seymour . .	155
— v. Harper . . . . .	242	Hindson v. Weatherall . . .	220
Gordon's Estate, <i>Re</i> . . . .	339	Hinves v. Hinves . . . . .	97
Gourlay, <i>Re</i> , <i>Ex parte</i> Abbott .	173	Hodges v. Hodges . . . . .	57
Gratitude, The . . . . .	306	Hodkinson v. Quinn . . . .	335
Gray, <i>Ex parte</i> , <i>Re</i> West		Holland v. Russell . . . . .	183
Hartlepool Iron Co. . . . .	36	— v. Wood . . . . .	327
Grazebrook v. Percival . . .	77	Holme v. Hammond . . . . .	147
Great Britain Mutual Life		Hooper v. Smart . . . . .	337
Assurance Society, <i>Re</i> The	144	Hop and Malt Exchange and	
Gregg, <i>Ex parte</i> , <i>Re</i> Latham .	89	Warehouse Co., The . . . .	348
Green v. Kopke . . . . .	186	Houldsworth v. Glasgow	
Greenway v. Greenway . . .	330	Bank . . . . .	347
Greeton v. Haward . . . .	56	Howe v. Earl of Dartmouth .	97, 98
Greig, In the goods of . . . .	283	Howell v. Coupland . . . .	41
Griffiths v. Earl of Dudley .	105	Hoyle, <i>Re</i> , <i>Ex parte</i> Waters .	15
Grimoldby v. Wells . . . .	241	Huggins v. Tweed . . . . .	218
Grimshaw's Trusts, <i>Re</i> . . . .	96	Huguenin v. Baseley . . . .	341
Gunn v. Roberts . . . . .	351	Hulme v. Tenant . . . . .	68
Gunter v. Halsey . . . . .	208	Hunter v. Atkins . . . . .	342
		Huntley v. Russell . . . . .	371
H.		Hussey v. Horn-Payne . . .	208
HAGAN, <i>Re</i> VAN . . . . .	160	Hutcher's case, <i>Re</i> The West	
Hadfield's case . . . . .	361	of England and South	
Hagger v. Payne . . . . .	329	Wales District Bank . . . .	36
Haghton v. Haghton . . . .	342	Hydraulic Engineering Co. v.	
Hallet's Estate, <i>Re</i> . . . . .	8	McHaffie . . . . .	42
Hancocks v. Lablache . . . .	72, 73		
Hanson v. Graham . . . . .	92	I.	
Harding, <i>Re</i> . . . . .	75	IBBETSON, <i>Ex parte</i> , <i>Re</i> Moore	14
— v. Glynn . . . . .	226	Iona, The . . . . .	303
		Iredell v. Iredell . . . . .	328
		Ireland v. Livingstone . . .	115

## TABLE OF CASES.

xvii

## J.

	PAGE
JACKSON, <i>Ex parte</i> . . . .	129
Jakeman v. Cook . . . .	13
Jennings v. Broughton . . .	120
Johnson, <i>Re</i> , Shearman v. Robinson . . . . .	59
Jolly v. Rees . . . . .	79
Jones, <i>Re</i> . . . . .	325
— <i>Re</i> , <i>Ex parte</i> Jones . . .	9
— v. Just . . . . .	43
— v. Wedgwood . . . . .	168
Jordan, In the goods of . .	283
Joselyne, <i>Ex parte</i> , <i>Re</i> Watt .	10
Julius v. The Bishop of Oxford . . . . .	319

## K.

KEATS v. Keats . . . . .	291
Keech v. Hall . . . . .	124
— v. Sandford . . . . .	225
Kemble v. Farren . . . . .	9, 10
Kendall v. Hamilton . . . .	144
Kettlewell v. Watson . . . .	239
Kevern v. Williams . . . . .	328
Kibble, <i>Ex parte</i> , <i>Re</i> Onslow .	8
Kidson v. Turner . . . . .	13
King v. Nugent . . . . .	105
Kingalock, The . . . . .	367
Kinnaird v. Webster . . . . .	345
Kirkham v. Martyr . . . . .	65
Kit Hill Tunnel, <i>Ld.</i> , <i>Ex parte</i> Williams . . . . .	15
Knapp v. St. Mary, Willesden .	315
Knight v. Combers . . . . .	185
— v. Moseley . . . . .	370
Knowles, <i>Re</i> , <i>Roose v.</i> Chalk .	245
Knox v. Eye . . . . .	227
Kopitoff v. Wilson . . . . .	113-4

## L.

LACON v. Mertins . . . . .	208
Lanoy v. Duke of Athole . . .	344
Latham, <i>Re</i> , <i>Ex parte</i> Gregg .	89, 90
La Ysabel . . . . .	306
Lechmere v. Carlisle . . . . .	197
Leda Browning, The . . . . .	309
Lee v. Nuttall . . . . .	60
Legg v. Goldwire . . . . .	343
Le Jouet, The . . . . .	302

## PAGE

Leventhorpe v. Ashbie . . . .	61
Levy, <i>Re</i> , <i>Ex parte</i> Walton . .	90, 91
Lilley v. Doubleday . . . . .	21
Lindsay v. Cundy . . . . .	31
Lloyd v. Spence . . . . .	118
— v. Fleming . . . . .	118
Locke v. Lamb . . . . .	328
Locking v. Parker . . . . .	340
London, Bombay and Medi- terranean Bank, <i>Lim.</i> , <i>Re</i> . .	36
Lord v. Colvin . . . . .	331
Lord v. Price . . . . .	242
Lowe v. Blakemore . . . . .	10
— v. Holme . . . . .	173
Lowry v. Lord Dufferin . . .	208
Lyell v. Kennedy . . . . .	162
Lynch, <i>Re</i> , <i>Ex parte</i> Lynch . .	9

## M.

MACDONALD v. Carrington . .	217
Mackay, A., and another v. The Commercial Bank of New Brunswick and others . .	122
Mackenzie's Trusts, <i>Re</i> . . . .	325
Mackinnon v. Stewart . . . . .	231
Mackreth v. Symmons . . . . .	225
Maggi, <i>Re</i> . . . . .	345
Mainwaring v. Beevor . . . . .	328
Manning v. Manning . . . . .	293
Mansel v. Attorney-General . .	299
Marathon, The . . . . .	303
Marsden v. Meadows, Salmon Claimant . . . . .	19
Marshall v. Marshall . . . . .	294
Martin v. Nutkin . . . . .	373
— v. Trimmer . . . . .	339
Mary Ann, The . . . . .	308
Master v. Miller . . . . .	26
Matthieson and another v. The London and County Banking Co. . . . .	26
Maturin v. Tredinnick . . . . .	348
Mawson v. Fletcher . . . . .	337
McDonald v. McDonald . . . .	155
McGiffen v. Palmer's Ship Building and Iron Co., <i>Lim.</i> . . . . .	109
McLay v. Perry . . . . .	41
McNaghten's case . . . . .	357, 358, 360, 361
Mead, <i>Re</i> . . . . .	52
Medina, The . . . . .	367

	PAGE		PAGE
Meek v. Chamberlain and Wife . . . . .	54	North of England Pure Oil Cake Co., Lim., The, v. The Archangel Maritime Bank and Insurance Co., Lim. . .	118
— v. Devenish . . . . .	339	Notara and another v. Henderson and others . . . .	113
Megevand, <i>Re, Ex parte</i> Delbusse . . . . .	148	Nugent v. Smith . . . . .	20
Mellonia, The . . . . .	303		
Mercier v. Pepperell . . . .	168	O.	
Mereweather v. Nixon . . . .	49		
Middleton, <i>Re, Thompson v. Harris</i> . . . . .	171	OAKES v. Turquand . . . . .	348
Middleton v. Messenger . . . .	327	O'Fay v. Burke . . . . .	208
Mills v. Jennings . . . . .	124	Ogden v. Bevas and another .	25
Mitchell v. Reynolds . . . . .	40	Ogg v. Shuter . . . . .	117
Montefiore v. Brown . . . . .	231	Ogle v. Knipe . . . . .	248, 249
Moore v. Moore . . . . .	52	Onslow, <i>Re, Ex parte</i> Kebble .	8
— <i>Re, Ex parte</i> Ibbetson . . . .	14	Oppenheim v. Henry . . . . .	328
Mordaunt v. Moncrieffe . . . .	289	Oriental Commercial Bank, The, <i>Ex parte</i> The European Bank . . . . .	18
Morgan, <i>Re</i> . . . . .	325	Osborn v. Morgan . . . . .	95
— v. Millman . . . . .	209	Oulds v. Harrison . . . . .	185
Morley v. Bird . . . . .	246		
Morris, <i>Re</i> . . . . .	60	P.	
— v. Morris . . . . .	330		
Morton and Hallett, <i>Re</i> . . . .	220	PACIFIC, The . . . . .	300
Moss v. Gallimore . . . . .	123	Padwick v. Scott . . . . .	217
Mountstephen v. Lakeman . . .	64	Padstow Total Loss and Collision Assurance Association, <i>Ex parte</i> Bryant . .	33
Mower's Trust . . . . .	127, 344	Page v. Horne . . . . .	342
Muir v. Glasgow Bank . . . . .	347	Pagin v. Gills . . . . .	31
Mulgrave, The . . . . .	366	Palmer v. Locke . . . . .	155, 156, 160
Mumford v. Stohwasser . . . .	86	Paraire v. Loibl . . . . .	168
Munday v. The Thames Iron Works and Shipbuilding Co. . . . .	109	Pares, <i>Re</i> . . . . .	235
Mutlow v. Bigg . . . . .	339	Parker v. Marchant . . . . .	248
		— <i>Re</i> . . . . .	96
N.		Partington, <i>Re</i> . . . . .	327
NADEN, <i>Ex parte, Re</i> Wood . . .	198	Pasley v. Freeman . . . . .	121
Napier, <i>Re</i> . . . . .	364	Patching v. Barnett . . . . .	171
Neptune, The . . . . .	302	Patent Paper Manufacturing Co., Addison's case . . . .	37
Newal v. Tomlinson . . . . .	183	Paterson v. Mills . . . . .	83
Newbury's Trusts, <i>Re</i> . . . . .	339	Patten, In the goods of . . . .	332
Newcastle, The Duke of . . . .	325	Pawlett v. Pawlett . . . . .	6, 92
Newitt, <i>Ex parte, Re</i> Garrud . .	16	Payne v. Barker . . . . .	325
Newlands v. Paynter . . . . .	70	Peachey v. Duke of Somerset .	149
Newman, <i>Re, Ex parte</i> Cap-per . . . . .	9	Peacock v. Peacock . . . . .	291
Nicholl v. Jones . . . . .	234	Pearson v. Pearson . . . . .	293
Nicol v. Jackaberry . . . . .	208	Pellus and Co. v. The Neptune Marine Insurance Co. . . . .	118
Nicols v. Marsland . . . . .	134		
Nickalls v. Merry . . . . .	36		

## TABLE OF CASES.

xix

	PAGE		PAGE
Pereda, De, v. Mancha, De . . .	66	Richmond v. White . . .	60
Pettit's Trust, <i>Re</i> . . .	11	Rickett v. Bell . . .	211
Petty v. Willson . . .	248	Ridsdale v. Clifton . . .	311
Phanton, The . . .	367	Robert v. Dinwell . . .	83
Phillips v. Phillips . . .	238, 290	Roberts v. Gordon . . .	339
Phosphate Bessemer Steel Co., <i>Ex parte</i> The Carn- forth Iron Co., Lim. .12, 242		Robinson v. Gee . . .	344
Phosphate Sewage Co., Lim. v. Hartmont . . .	31	Robinson v. Pett . . .	59
Pickering v. Pickering . . .	97, 111	— v. Wheelwright . . .	56
Pike v. Fitzgibbon . . .	71, 72, 73	Rogers v. Price . . .	351
Pitt v. Jones . . .	140, 141	Rolfe v. Gregory . . .	227
Pooley v. Driver . . .	148	Rolls v. Pearce . . .	52
Portland (Duke of) v. Topham . . .	155	Rooke v. Lord Kensington . . .	343
Pottinger v. Wightman . . .	332	Roose v. Chalk, <i>Re</i> Knowles . . .	245
Powell v. Powell . . .	280	Roper v. Johnson . . .	49
Pride of Canada, The . . .	366	Rosario, The . . .	366
Pride v. Bubb . . .	281	Rose v. Rose . . .	199, 292
Pugh v. Heath . . .	239	Rowley v. Rowley . . .	293
Pye, <i>Ex parte</i> . . .	196, 336	Rutland, <i>Re</i> The Duke of . . .	325
		Ryder v. Wood . . .	325
		Rylands v. Fletcher . . .	134

## R.

RANKEN v. Alfaro . . .	113
Rapid, The . . .	302
Redgrave v. Hurd . . .	63, 120
Rees Silver Mining Co. v. Smith . . .	347, 348
Regina v. Banks . . .	258
— v. Collins . . .	256
— v. Dennis . . .	260
— v. Gaylor . . .	256
— v. Holbrook . . .	99
— v. Hughes . . .	362
— v. Kenny . . .	259
— v. Martin . . .	260
— v. Millard . . .	362, 363
— v. Morris . . .	259
— v. Morrison . . .	258
— v. Nash . . .	260
— v. Pear . . .	258
— v. Ritson . . .	261
— v. Roberts . . .	256
— v. Shaw . . .	362
— v. Smith . . .	296
— v. Taylor . . .	256
— v. Torpey . . .	259
— v. Turner . . .	256
— v. Trenfield . . .	260
Rex v. Bishop of Chester . . .	316
Rhodes v. Bate . . .	342

## S.

SADLER, <i>Ex parte</i> , <i>Re</i> Hawes . . .	89
Salacia, The . . .	267
Sampson v. Pattison . . .	340
Sarah Jane, The . . .	267
Saratoga, The . . .	301
Savage v. Foster . . .	62
Scot v. Harwood . . .	328
Scott v. Scott . . .	111, 293
Searle v. Laverick . . .	133
Sells v. Sells . . .	343
Shannon v. Bradstreet . . .	208
Sharp v. Leach . . .	342
Shearman v. Robinson, <i>Re</i> Johnson . . .	59
Shelley's case . . .	223
Shepherd v. Harrison . . .	115, 117
Sheppard v. Bennett . . .	312
Ship v. Crosskill . . .	348
Shuttleworth v. Greaves . . .	329
Silesia, The . . .	367
Singleton v. Gilbert . . .	329
— v. Tomlinson . . .	339
Sisson v. Giles . . .	339
Smart v. Smart . . .	325
Smith v. Chadwick . . .	120
— v. Claxton . . .	45, 229
— v. Cowell . . .	176
— v. Lucas . . .	56



## xxi

	PAGE		PAGE
Walmesley v. Butterworth . . . . .	202	Whitmore v. Whitmore . . . . .	293
Walsh v. Lonsdale . . . . .	209	Wicker v. Hume . . . . .	330, 331
Walton, Ex parte, Re Levy . . . . .	90, 91	Wigglesworth v. Dallison . . . . .	110
Warner v. Jacob . . . . .	226	Wilcocks v. Wilcocks . . . . .	197
Warrender v. Warrender . . . . .	831	Wildor v. Pigott . . . . .	56, 57
Warrior, The . . . . .	302	Wild's case . . . . .	58
Waters, Ex parte, Re Hoyle . . . . .	15	Williams, Ex parte, Re Kit Hill Tunnel, Ltd. . . . .	15
Watkins, Re, Ex parte Evans . . . . .	173	——— v. Bishop of Salisbury . . . . .	312
Watkins v. Cheek . . . . .	335	——— v. Dormer . . . . .	331
Watson v. Waltham . . . . .	340	——— v. Edwards . . . . .	337
Watt, Re, Ex parte Joselyne . . . . .	10	——— v. Williams . . . . .	111
Waverley, The . . . . .	366	Willcock v. Noble . . . . .	248
Webster v. Cecil . . . . .	211	Willmot v. Pike . . . . .	238
Weckersheim's case . . . . .	37	Wilson v. Fendall . . . . .	312
Weir v. Johnson . . . . .	167	——— v. Williams . . . . .	336
Wellesley v. Lord Morning-ton . . . . .	155	Winchouse v. Winchhouse . . . . .	345
Wells, Re . . . . .	325	Winston's case, Re The Albion Life Assurance Society . . . . .	144
—— v. Barwick, Re Hardy . . . . .	95	Winter, Re, Ex parte Bolland . . . . .	16
Wensley, In the goods of . . . . .	285	Withernsea Brick Works, Lim., Re The . . . . .	35, 345
Westby v. Westby . . . . .	111	Wood, Re, Ex parte Naden . . . . .	198
Western v. Russell . . . . .	336	Woodgate v. Godfrey . . . . .	19
West Friesland, The . . . . .	300	Woodrup Sirus . . . . .	304
West Hartlepool Iron Co., Ex parte Gray . . . . .	36	Wright v. Davies . . . . .	314
Westminster, The . . . . .	367	——— v. The Midland Ry. Co. . . . .	132
West of England and South Wales District Bank, Hutcher's case . . . . .	36		
Whalley v. Whalley . . . . .	227		
Wheatley v. Slade . . . . .	337		
Wheelwright v. Walker . . . . .	325		
Whitbread v. St. John . . . . .	328		
Whitcombe v. Whitcombe . . . . .	331		
White v. Witt . . . . .	175		



# THE HONOURS EXAMINATION DIGEST.

---

## PART I.

THE PRINCIPLES OF THE LAW OF REAL AND PERSONAL PROPERTY, AND THE PRACTICE OF CONVEYANCING; THE LAW, PRACTICE, AND PROCEDURE OF THE CHANCERY DIVISION; AND THE LAW, PRACTICE, AND PROCEDURE OF THE QUEEN'S BENCH DIVISION, AND OF THE COURT OF BANKRUPTCY.

---

### ADMINISTRATION OF ASSETS.

1. *State the order in which the different properties of a testator are, as between such properties, liable to satisfy his debts in the event of the estate being administered by the Court.*

(1.) The general personal estate not bequeathed at all, or bequeathed by way of residue only.

(2.) After the general personalty, the next fund resorted to for the payment of debts is land devised upon express trust for their payment. Such land is equitable assets; and, therefore, in all cases distributed amongst creditors *pari passu*.

(3.) Next in order stand lands descended to the heir, and not charged with debts. Since 3 & 4 Will. IV. c. 106, if there is a specific devise of lands to the heir, he is considered to take them in the character of devisee, and not by descent. His position as



regards these lands is, therefore, the same as that of any other specific devisee.

(4.) Lands devised and personalty bequeathed charged with the payment of debts are next liable; and being equitable assets, are distributed in payment of debts *pro rata*. Moreover, if a devise of lands so charged lapses, and the heir consequently takes, this does not alter their place in the order of administration. They still rank as lands charged, and not as lands descended. Lands charged with debts being equitable assets, the Court, in its favour of an equal distribution amongst creditors, has been inclined to give as wide a construction as possible to any passage in a will which can be considered as amounting to a charge of debts. A mere declaration that the debts shall be paid by the executors will not, indeed, amount to a charge of debts on realty, which does not come to the hands of the executors at all. But if with such a direction real estate is devised to executors, then it is considered as charged in their hands, unless from the special circumstances of the case a contrary intention is apparent. If, moreover, there is a direction in general terms that debts shall be paid, not specifying by whom, and accompanied by an expressed intention to dispose of the real estate, that effectually charges devised lands. The principle is that such a general direction indicates an intention that the debts shall at all events be paid in preference to any disposition of real or personal property.

(5.) General pecuniary legacies next abate *pro rata* as far as is necessary. Annuities are equivalent to legacies, and after valuation (since the Judicature Act, 1875, sect. 10, on the principles of bankruptcy) abate *pro rata* with them. It must be observed also that if a general legacy be given for valuable consideration, such as the relinquishment of dower, or of a debt, it is entitled to priority over all merely voluntary legacies.

(6.) Then specific legacies and specifically devised real estate not charged with debts are resorted to *pro rata*.

Under this head it is to be observed that a residuary devise is considered to be specific.

(7.) A widow's paraphernalia was liable (with the exception of her wearing apparel) to her husband's debts; and this would appear to have been its proper place in the order of administration.

The effect of the Married Women's Property Act, 1882, would

seem to be to enable a married woman to hold her paraphernalia as separate property. It is submitted, however, that articles given to her *by her husband* would still be liable, as before the Act, for payment of his debts.

(8.) Lastly, real or personal property over which the testator has a general power of appointment, and over which he has actually exercised that power by will or by deed in favour of volunteers, is applicable. As the creditors can only claim under the appointment, which is a voluntary act, they will have no claim unless the power is actually exercised, since equity will not interfere to aid the non-execution of a power in favour of volunteers except as hereinafter mentioned. It must be observed, however, that a residuary gift will, under sect. 27 of the Wills Act (1 Vict. c. 26), operate as an appointment, unless a contrary intention appears. Property appointed is equitable assets, and accordingly distributable *pro ratâ*. (H. A. Smith's Equity, 499—502.) The non-execution of a power will only be relieved against in cases of trust-powers and where the power is not exercised through fraud.

*2. A testator who is considerably indebted but solvent, by his will gives certain specific and pecuniary legacies, appoints to A. real and personal property under a general power of appointment, bequeaths his residuary personal estate to B., devises a freehold estate to C. and D. upon trust to sell, and out of the proceeds to pay his debts, charges two other estates with the payment of his debts and subject thereto, devises one estate to E. and the other to F., devises another estate to G., and the rest of his real estate to H. and K. as tenants in common. K. died in the testator's lifetime. State the order in which the assets will be administered.*

The different properties will have to bear the debts of the testator in the following order:—

- (1.) The residuary personal estate bequeathed to B.
- (2.) The proceeds of the freehold estate devised to C. and D.
- (3.) K.'s interest as tenant in common, which would have devolved upon him if he had lived, but which, as he is dead, subject to the debts not paid out of the above properties, (1) and (2), devolves upon the testator's heir at law. (See A. 1 (3).)
- (4.) The estates devised to E. and F. respectively, and charged with the debts.

(5.) Pecuniary legacies now abate rateably *inter se*. (See A. 1 (5).)

(6.) The specific legacies, the estate devised to G. and the interest of H. in the residuary real estate bear the debts next in order rateably *inter se*.

(7.) And, lastly, the real and personal estate appointed to A. bears the debts not satisfied by all the above properties. (Snell's Equity, 5th ed. 271 ; H. A. Smith's Equity, 499, *et seq.*)

3. *Explain clearly the practical difference between marshalling assets as between creditors and as between legatees, and illustrate by examples. A legacy is charged upon real estate, but the legatee dies before it becomes payable. What is the effect of this ?*

Putting aside marshalling securities as between the creditors of a living person which is not within the terms of the question, we have marshalling as between creditors and marshalling as between beneficiaries or legatees.

Marshalling as between creditors of the same person is now no longer necessary. It was necessary when, prior to 3 & 4 Will. IV. c. 104, simple contract creditors had no claim upon real assets unless charged with debts, and then the Courts in administering equity compelled specialty creditors, who could resort to these assets, to seek their remedy thereout, so as to leave the personal assets for the creditors by simple contract ; or if the specialty creditors exhausted the personalty, the simple contract creditors were suffered to stand in their place against the real assets, but only to the extent to which the personalty had been applied in payment of the specialty debts. They were not entitled to have a larger fund than they had originally. No question can now arise as to marshalling between secured and unsecured creditors of any class, the rules of administration being now regulated by those of bankruptcy (sect. 10 of Judicature Act, 1875). An example may, however, be here given of its former application. A., a creditor of a deceased person holding a bond given to him as a security for his debt, and in which the deceased had bound his heirs, obtained payment from the executor out of some personal estate of the deceased in his hands. Now A., instead of doing this, might have claimed payment from the heir or devisee to the

extent of the lands devolving upon him from the deceased, which B., another creditor of the deceased, secured only by a bill of exchange accepted by the deceased and drawn by B. upon him, could not have done. B., however, might, if there had been enough personalty in the executor's hands, have claimed payment of his bill out of that, but we will assume that there was not, and consequently B., as the law then was, would have gone unpaid but for this equitable doctrine of marshalling assets, whereby under such circumstances the Court interposed in favour of B., and declared him entitled to be paid out of the lands so devolving upon the heir or devisee so much of his debt as was equal to A.'s debt, thus placing B. in A.'s shoes.

Marshalling as between beneficiaries and legatees. This doctrine is utilised in the administration of assets of deceased persons in two classes of cases :—

(1.) Where the creditors in exercising their rights to obtain payment out of more than one property have interfered with the rights of some or all of the beneficiaries against the one property only available to them. In such cases, to restore the order of administration which the creditor's election has disturbed, the law permits any beneficiary who is disappointed by the creditor's action to stand in the creditor's place as against any fund which is in the order of administration liable before his own. If, for instance, the creditors have exhausted a fund which was available for the payment of pecuniary legacies, and have not resorted to certain lands devised, subject to and charged with all the debts, the pecuniary legatees have a right to have the lands so devised marshalled in their favour, or, in other words, they have a right to have the lands realised by sale, and their legacies paid out of the proceeds to the extent of the value of the debts which have been satisfied out of the legatees' fund.

(2.) This doctrine is also utilised in the administration of assets of a deceased person as between the beneficiaries or legatees themselves; as, for instance, where a testator charges some legacies on real estate but not others, and the personal estate proves insufficient to pay them all, the legacies charged on the real estate will be thrown thereon in order to leave the personalty for the payment of the other legacies. Or if the privileged legatees choose to exhaust the personalty, the others may *pro tanto* stand in their place as against

the real estate charged. The principle is clearly the same as in the previous case, the legatees whose legacies are charged on the land have two funds at their disposal (like the creditors there), whilst the other legatees (like the beneficiaries there) have but one. This doctrine will not, however, be applied so as to alter the effect of the rules of construction of legacies. (See H. A. Smith's Equity, 509—514.)

The effect of the legatee dying before it becomes payable, when the legacy is charged on real estate, is that the legacy sinks into the estate for the benefit of the inheritance, and accordingly it is lost to the legatee and his estate, in accordance with the decision in *Pawlett v. Pawlett*. (Tud. L. C. Conv. 720; Haynes's Student's Leading Cases, 225.)

---

#### APPROPRIATION OF PAYMENTS.

4. *What is the general rule of law with reference to the appropriation by a creditor of payments made to him on account by his debtor? First, where the debtor pays the money expressly in discharge of or on account of a particular item; and, secondly, where he pays it generally on account of the whole debt, without any direction as to its appropriation. Can the creditor apply the money to the payment of an item barred by the Statute of Limitations?*

The leading authority on this point is *Clayton's case* (1 Mer. 585), from which we learn that the following rules are applicable:—

(1.) A debtor making a payment has a right to appropriate it to the discharge of any debt due to his creditor. The debtor may appropriate the payment by so stipulating in express terms, or his intention so to do may be inferred from the circumstances of the transaction; thus where one of the debts owing was secured and another unsecured, an intention first to discharge the secured debt was presumed. This right of appropriation by the debtor is, however, lost unless exercised at the time of payment. If he does not then declare on what account the money is paid, he cannot afterwards do so.

(2.) If at the time of payment there is no express or implied appropriation thereof by the debtor, then the creditor has a right to make the appropriation. The creditor's right to make such appropriation is, however, subject to some limitations. He may not indirectly secure payment of an illegal debt by appropriating a general payment to its discharge; but a debt barred by the Statute of Limitations is not illegal, the statute (as to personal property) being merely a bar to the remedy, not to the right; and if, therefore, a general payment is made, without appropriation by the debtor, it may be appropriated by the creditor to the discharge of a statute-barred debt. It must, nevertheless, be observed that it will not have the effect of reviving the debt; or, in other words, though by the appropriation the creditor may secure payment of a portion of a statute-barred debt, he does not by that means acquire a right of action for the remainder of it. But if a debt is not barred, a general payment on account appropriated towards its liquidation will take it out of the operation of the statute; that is to say, the statutory period will again commence to run from the time of such payment and appropriation.

(3.) In the absence of any appropriation by either debtor or creditor, an appropriation is made by presumption of law, according to the order of the items of account, the first item on the debit side being the item discharged or reduced by the first item on the credit side. This is the express point decided in *Clayton's case*, and is abundantly confirmed by subsequent authority. This presumption may, however, be rebutted by evidence of a different intention; and where a debt bearing interest stands against a debtor, general payments made by him are first to be applied in payment of interest, any balance beyond what is necessary for that being then credited in reduction of the principal. (H. A. Smith's *Principles of Equity*, 474—6.)

5. *State the rule as to appropriation of payments laid down in Clayton's case, and distinguish it from novation. Can the rule be applied in respect of claims founded on fraud?*

The rules laid down in *Clayton's case* are set out in Answer 4.

Novation is the substitution of a new debt or obligation for an old one. This may be effected by the substitution of one creditor

for another, or by the substitution of one debtor for another, or by the substitution of one kind of liability or obligation for another between the same parties. But in Chancery practice the question of novation has most frequently arisen in reference to the transfer of the business of life assurance companies, where a policy-holder is alleged to have accepted the liability of a new company in lieu of the one in which the policy was originally effected. In order to effect a novation, the abandonment of the claim against the original company must, by stat. 35 & 36 Vict. c. 41, s. 7, be in writing and signed by the policy-holder, or by his agent lawfully authorised. (Mozley and Whiteley's Law Dictionary, pp. 25, 281, 282; Law Examination Journal, No. 51, p. 207.)

The rule laid down in *Clayton's case* is a mere presumption of law which, like all other presumptions of law, only applies so long as there is no evidence either of agreement to the contrary or of circumstances from which a contrary intention must be presumed, and then it gives way to those other considerations. In *Re Hallett's Estate* (49 L. J. Ch. (App.) 415, 428) the rule in *Clayton's case* was held not to apply as between trustee and *cestui que trust*, and it seems on the same grounds not to apply to claims founded on fraud, which has not been waived or acquiesced in.

---

## BANKRUPTCY.

6. *Can two or more creditors whose debts together amount to more than £50, though each debt is less, combine together and issue a debtor's summons on which the debtor can be adjudicated bankrupt? If so, will a tender by the debtor to one of such creditors of the amount of his debt prevent the adjudication? Refer to any statute or decided case on the subject.*

Yes, they are able to do so; but they must in that event stand or fall together, and if a petition founded on non-compliance with that summons be presented they must both or all join in it, as there can be but one act of bankruptcy upon the summons. (*Ex parte Kibble, Re Onslow*, 44 L. J. Bcy. 63; L. R. 10 Ch. 377.)

The tender by the debtor to one of such creditors of the amount of his debt will not prevent the adjudication. (*Re Andrew*, L. R. 1 Ch. D. 358.)

7. *Can a debtor who has traded while under age, after he has attained full age be adjudicated a bankrupt in respect of a trade debt contracted, and upon an act of bankruptcy committed, during his infancy? Give reasons for your answer.*

No, he cannot, because by law an infant is deemed incapable of trading, and therefore cannot be made a bankrupt in respect of such a debt. If the debt had been for necessities supplied to the infant suitable to his condition in life it would be otherwise. A trade debt cannot be enforced against an infant, although it is confirmed by him in writing after he comes of age. (37 & 38 Vict. c. 62; and see the recent case on appeal, *Re Jones, Ex parte Jones*, 50 L. J. Ch. (App.) 673, overruling *Re Lynch, Ex parte Lynch*, 45 L. J. Bey. 48; L. R. 2 Ch. D. 227.)

8. *A., by a written agreement, contracts with B. to build certain premises by a given date. The agreement contains various conditions and stipulations, and finally a provision that if the contract be not in all things duly performed by the contractor, that he shall pay to his employer (B.) £1000 as and by way of liquidated damages. Before the works are completed A. becomes bankrupt, his trustee carries on the work for some time and then abandons the contract. Another builder is then employed to complete the works, which are not finished till long after the time named. Can B. prove against A.'s estate for the £1000 or for any other amount? Give reasons for your answer.*

The above case is similar to *Re Newman, Ex parte Capper* (App.), 46 L. J. Bey. 57; L. R. 4 Ch. D. 724, where it was decided that the £1000 was a penalty and not liquidated damages. It follows, therefore, that B. can prove against A.'s estate for the amount of damage he has actually sustained through "the contract not being in all things duly performed by A. and at the time named." The question whether a specified sum is to be regarded as a "penalty" or "liquidated damages" is for the Court. The leading case is *Kemble*



v. *Farren*, 6 Bing. 141. Chitty, in his work on Contracts, 10th ed., p. 809, deduces from the cases the following rule:—

The Courts will hold that the words “liquidated damages” are not to be taken according to their obvious meaning in any case where the doing or omitting to do several things of various degrees of importance is secured by the sum named, and where, notwithstanding the language used, it is plain from the whole instrument that the real intention was different. And so it is said that if a party agree to pay a specific sum on several events, all of which are capable of accurate valuation, it must be construed as a penalty and not as liquidated damages. (Chitty on Contracts, 10th ed., pp. 809, 810.) But if by a contract one certain sum is to be paid as liquidated damages on breach of any one of several stipulations, the real damages for the breach of no one of which can be ascertained at the date of the contract, such sum will not be treated as a penalty, even though it is apparent on the face of the agreement that the breach of one stipulation may be more serious in its consequences than the breach of another. Where, however, one of the stipulations is to pay a fixed sum of money, and the amount to be paid for breach of any stipulation is a much larger sum, such amount is a penalty, and only the real damage can be recovered. (*Wallis v. Smith*, 47 L. T. 389.)

9. *A judgment creditor obtains a garnishee order nisi attaching a debt due to his judgment debtor, but before it is made absolute the latter becomes bankrupt. Who is entitled to the attached debt, the judgment creditor or the trustee in bankruptcy? Give reasons for your answer.*

The judgment creditor, because from the date of the garnishee order *nisi* if validly made and served he becomes a secured creditor within the meaning of sect. 16 (5) of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71). (*Re Stanhope Collieries Co.*, L. R. 11 Ch. D. 160; *Lowe v. Blakemore*, L. R. 10 Q. B. 485; 44 L. J. Q. B. 55; *Ex parte Joselyne, Re Watt*, L. R. 8 Ch. D. 327; 47 L. J. Bank. 91; Baldwin's Bankruptcy, 113.)

10. *A bankrupt, or liquidating debtor by arrangement, after his discharge, but before the proceedings are closed, acquires further*

*property. To whom will the same belong? To the debtor or the trustee in bankruptcy? Give reasons and refer if you can to any section or sections of the Bankruptcy Act affecting the question, and any decided case upon the subject.*

To the debtor, because to hold otherwise would be to decide that a debtor cannot acquire property on his own account with his creditors' consent until all his estate has been realised, however many years that may take to do. The sections affecting the questions are sects. 15, 48, and 49. The decided case is *Ebbs v. Boulnois*, 44 L. J. Ch. 691; L. R. 10 Ch. 479; 32 L. T. 650; 23 W. R. 820; Baldwin's Bankruptcy, 172; and see *Re Pettitt's Trust*, 45 L. J. Bcy. 63; L. R. 1 Ch. D. 478; 34 L. T. 51; 24 W. R. 359. Sect. 15 of 32 & 33 Vict. c. 71, is to be read as if it were subject to the proviso in sect. 48 of that Act: *Per James, L.J., in Ebbs v. Boulnois, supra.*

11. *A. has proved in the bankruptcy of B., and has received a dividend (less than 10s. in the £). The bankruptcy has been closed, but no discharge granted. Can A. take any, and if any, what steps, and when, to obtain payment of the balance of his debt?*

A. cannot take any steps to obtain payment of the balance of his debt until the expiration of three years from the close of the bankruptcy. At the end of the three years, if the bankrupt has not obtained his order of discharge during the three years, any balance remaining unpaid in respect of any debt proved in such bankruptcy (but without interest in the meantime) will be deemed to be a subsisting debt in the nature of a judgment debt, and, subject to the rights of any persons who have become creditors of the debtor since the close of his bankruptcy, may be enforced against any property of the bankrupt with the sanction of the Court which adjudicated him a bankrupt, or of the Court having jurisdiction in bankruptcy in the place where the property is situated, but to the extent only and at the time and in manner directed by such Court, and after giving such notice and doing such acts as may be prescribed in that behalf. (32 & 33 Vict. c. 71, s. 54.)

12. *Sale by A. to B. of 300 tons of ore, to be delivered 50 tons*

*per month. The whole quantity is delivered except one instalment of 50 tons, due in January. The previous December instalment had not been paid for, and after its delivery B. had declared himself insolvent, and subsequently became bankrupt. A., in consequence of such declaration of insolvency, refused to deliver the January instalment. No tender of the price was made by the trustee in bankruptcy, who, however, called upon the seller A. for damages for breach of contract. Advise A. as to his legal rights under the above circumstances.*

A. was justified, after B.'s declaration of insolvency, in refusing to deliver the January instalment, and consequently the trustee cannot recover any damages for breach of contract (*Ex parte Chalmers, Re Edwards*, 42 L. J. Bcy. 2, and on app. 37; L. R. 8 Ch. 289). We therefore should advise A. not to part with the January instalment until the trustee tenders to him not only the price of the January instalment, but also the price of the unpaid December instalment.

It may be mentioned that nothing short of a distinct inability on B.'s part to pay, avowed either by word or deed, will entitle a vendor to refuse to deliver. (*Re The Phoenix Bessemer Steel Co., Limited, Ex parte The Carnforth Hæmatite Iron Co., Limited*, 46 L. J. Ch. 115; L. R. 4 Ch. D. 108; 25 W. R. 187; 35 L. T. 776; Baldwin's Bankruptcy, 60.)

13. *Action of tort. Plaintiff obtains a verdict for, say, £500 damages: after verdict, but before judgment signed, defendant is adjudicated a bankrupt. Can the plaintiff be restrained from enforcing his judgment for the amount of his verdict? Give reasons for your answer.*

No; because the jurisdiction of the Court to restrain any creditor from proceeding is conferred only by sect. 13 of the Bankruptcy Act, 1869, and that section is limited to "debts provable" in the bankruptcy, and the £500 damages in this case not being liquidated and arising in respect of a tort, is not a debt provable until it becomes liquidated by the judgment of the Court. (See *Ex parte Baum, Re Edwards*, 44 L. J. Bcy. 25; L. R. 9 Ch. 673; *Ex parte Brooke, Re Newman*, 46 L. J. Bcy. 57; L. R. 3 Ch. D. 494; Baldwin's Bankruptcy, 148.)

14. *B., a bankrupt, after adjudication, gives to one of his creditors a bond for his debt, provable under the bankruptcy. Can the creditor sue B. upon the bond? Give reasons for your answer. After doing so, substitute "bill of exchange" for "bond" in this question, and say whether it would under any and what circumstances make any and what difference to B.'s liability.*

Previous to the Bankruptcy Act, 1869, coming into operation, the law was that such a bond could not be sued upon, but such a bill of exchange might have been sued upon by a *bond fide* holder for value without notice of the bankruptcy proceedings (see the Bankruptcy Act, 1861, sect. 164; and *Kidson v. Turner*, 3 H. & N. 581). The law on the subject is now the same (*Chitty on Contracts*, 182) unless the bond or bill of exchange is void under the law of fraudulent preference, or as an act of bankruptcy, or under 13 Eliz. c. 5, or as amounting to a fraud at common law. If a bankrupt or liquidating debtor, after having obtained his discharge, for a new consideration enters into a contract with one of his former creditors to pay a debt which that creditor is barred by the discharge from suing him for, as well as a new sum, the creditor can sue the discharged bankrupt or liquidating debtor both for the old debt and new sum, notwithstanding the discharge (*Jakeman v. Cook*, 48 L. J. Ex. 165; L. R. 4 Ex. D. 26). If, however, composition proceedings are pending under the Bankruptcy Act, 1869, and they, though partially, are not completely wound up, one of the creditors who is bound by the composition cannot, behind the backs of the other creditors who are also bound thereby, enter into an arrangement with the debtor whereby he is to be paid his own debt in full, nor can the fact that the creditor agrees on his part to supply the debtor with goods on credit at all validate the arrangement. (*Ex parte Barrow, In re Andrews*, 50 L. J. Ch. 821.)

15. *A., in consideration of a loan of £500, assigns a policy of life assurance on his (A.'s) life to secure the payment of such loan. A. afterwards becomes bankrupt. No notice of the assignment of the policy is given to the insurance company until after the adjudication. The trustee claims the policy as being in the order and disposition of the bankrupt. Is he entitled to it as against the*

*assignee of the policy? Give reasons for your answer, and refer, if you can, to any decision on the subject.*

No. The assignee is entitled because the bankrupt is not the real owner of the policy, so that he has no interest therein which could pass under sect. 15 (3) of 32 & 33 Vict. c. 71, and it cannot pass under sect. 15 (5) as being part of goods and chattels in the possession, order or disposition of the bankrupt, because the policy, although a chose in action, is not a debt due to the bankrupt in the course of his trade or business, and therefore comes within the exception contained in sect. 15 (5). (*Ex parte Ibbetson, Re Moore*, L. R. 8 Ch. D. 519; 39 L. T. 1; 26 W. R. 843; Baldwin's Bankruptcy, 77.)

16. *Has there been any, and, if any, what recent alteration in the law in reference to goods being in the order and disposition of a bankrupt? Refer to any statute upon the subject.*

A bill of sale prior to the Bills of Sale Act, 1878, which came into operation on the 1st January, 1879, was always invalid so far as the order and disposition clause of the Bankruptcy Act, 1869, sect. 15, was concerned if the grantor was a trader, although it was registered under the Bills of Sale Acts, 1854 and 1866.

By the Bills of Sale Act, 1878, it was enacted (sect. 20) in effect that a bill of sale, so long as it was duly registered under that Act, should prevail against the order and disposition clause of the Bankruptcy Act, 1869, if the grantor was a trader.

Now, however, sect. 20 of the Bills of Sale Act, 1878, is repealed by the Bills of Sale Act of 1882, sect. 15. The Bills of Sale Act of 1882, however, only applies to bills of sale given by way of security for the payment of money, so that it may be held that sect. 20 of the Bills of Sale Act, 1878, is still in force as to bills of sale not given by way of security for the payment of money, as post-nuptial settlements. At any rate, the law now is as to bills of sale given "by way of security for the payment of money," that if the grantor is a trader and his affairs are either liquidated by arrangement or in bankruptcy, the bill of sale, though duly attested and registered, is of no avail against the title of the grantor's trustee as regards any goods in the possession, order or disposition of

the grantor within the meaning of the Bankruptcy Act, 1869, sect. 15. (Indermaur's Bills of Sale Acts, p. 91, and Appendix.)

17. *A contracts a debt payable upon a contingency, and afterwards, and before the happening of such contingency, becomes bankrupt. Can the person with whom such debt has been contracted take any, and what, steps to entitle him to receive dividends on the debt before the contingency happens, and is there any, and what, exception to the right to take such steps?*

Provided the creditor had no notice of any act of bankruptcy committed by the debtor available for the particular adjudication made (*Ex parte Crosbie, Re Bedell*, L. R. 7 Ch. D. 123; 47 L. J. Bcy. 10) before or at the time of the debt being contracted, such creditor should at once make a proof of his debt by making an affidavit of his debt, together with his own estimation of its value, and send it to the trustee under the bankruptcy. If the trustee is not satisfied with the creditor's estimate, and there are no rules of the Bankruptcy Court for the time being in force applicable to the creditor's claim, the trustee has a discretion to fix his own estimate of its value, and the creditor, if he feels aggrieved at the trustee's estimate, may appeal to the Court within fourteen days. The Court, without a jury, with the consent of the creditor and of the trustee, can assess the plaintiff's proof. If they will not consent, the Bankruptcy Court will either send it with a request to the High Court of Justice, Queen's Bench Division, to be ascertained before that Court and a jury, or will assess its value before the Bankruptcy Court and a jury. If it is incapable of being fairly estimated the Bankruptcy Court may by order so declare, and thereupon the creditor's debt will be deemed to be a debt not provable in the bankruptcy, and for which, therefore, the bankrupt would be liable, even after his discharge subsequently obtained. The proof will not, if admitted, be allowed to disturb any dividend declared before it was made. (See *Re Kit Hill Tunnel, Ex parte Williams*, 50 L. J. Ch. 303; and see *Ex parte Waters, Re Hoyle*, L. R. 8 Ch. 562; Baldwin's Bankruptcy, 147—8.)

18. *A building contract contains a clause that if the contractor become bankrupt before the completion of the work, the architect may*

*appoint other persons to complete it, and that he, the architect, shall have power to seize and retain all materials, implements, and plant. The contractor, after executing part of the work, files his petition for liquidation, and afterwards, and before the appointment of trustee, the architect takes possession of the materials, implements, and plant. What are the rights of the employer and trustee in bankruptcy respectively, with reference to the possession thereof?*

It is not clearly stated whether the contractor files his liquidation petition and is afterwards adjudicated bankrupt, or files his liquidation petition and a trustee is appointed thereunder, though for the purposes of answering the question it is immaterial whether liquidation is resolved upon by his creditors and a trustee is appointed thereunder, or a bankruptcy petition is presented by a creditor and an adjudication in bankruptcy ensues and a trustee is appointed by the creditors thereunder.

In either case the architect acquires a right of user of the materials, implements, and plant seized for the purposes of completing the contract; but the employer has no right to seize or retain such materials, implements, or plant, on the ground of his having a set-off against the contractor in respect of the subject matter of the contract, as there is no mutual dealing within the Bankruptcy Act, 1869, sect. 39.

The trustee will take the materials, implements, and plant, subject to the architect's right of user, to complete the contract as above stated. (*In re Winter, Ex parte Bolland*, 47 L. J. Bcy. 52; L. R. 8 Ch. D. 225; *Ex parte Newitt, In re Garrud*, 51 L. J. Ch. D. 381; and see *Booth v. Hutchinson*, 42 L. J. Ch. 492; L. R. 15 Eq. 36.)

It is true that these cases were both decided prior to the commencement of the Bills of Sale Acts, 1878 and 1882, but we do not think they will be construed to alter the case for want of registration of the contract under the former Act. Such a contract might be held to confer a right in equity to personal chattels in the abstract; but, on the other hand, such contracts are so common in practice that we think this unlikely.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

19. *The holder of a bill of exchange, which is dishonoured after the appointment of a trustee in bankruptcy of the drawer, sends notice of dishonour to the drawer by post to his last known address, which he had left for some months. Is such notice sufficient so as to entitle the holder to prove in the bankruptcy in respect of the bill? Refer, if you can, to any decision on the subject.*

Yes. The decision of the Court of Appeal to the point (and which is probably the one referred to) is *Ex parte Baker, Re Bellman*, 46 L. J. Bey. 60.

The law on the subject is now, however, governed by the Bills of Exchange Act, 1882, sect. 49, sub-s. (10), which enacts that where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.

20. *Can the holder of a bill of exchange prove against the estate of the acceptor, drawer, or indorsee who has become bankrupt before the bill becomes due? If so, upon any and what condition? Apply this question also to the right of the holder of a promissory note, payable on demand, where no demand has been made before the act of bankruptcy.*

Yes, he can do so against the estate of either one, subject to a rebate of interest at the rate of £5 per cent. per annum from the declaration of a dividend to the time at which the bill would have become payable according to the terms upon which it is drawn. (Bankruptcy Rules, 77; Baldwin's Bankruptcy, 145).

In the case of the promissory note, he can prove for the full amount at once, the tender of the proof being a sufficient demand.

21. *Bill of exchange accepted by B. at the request and for the accommodation of C., the drawer, the latter undertaking to find funds to meet the bill at maturity. Bill endorsed by C. and discounted. Before it arrives at maturity B. and C. both become bankrupt. The holder proves on both estates and receives dividends from both estates. Has B. a right to prove on C.'s estate for the amount received by the holder from B.'s estate?*



No. B. has no such right, as such a proof, if allowed, would constitute a double proof against C.'s estate for the same debt. This is the rule in bankruptcy and in the winding up of companies (*In re The Oriental Commercial Bank; Ex parte The European Bank*, 41 L. J. Ch. 217; L. R. 7 Ch. App. 99, reversing decision of V.-C. Bacon in L. R. 12 Eq. 501). The Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), contains no provision on the above point.

22. *A foreign bill of exchange is refused acceptance or payment. What steps should be taken, and when, in this country, in order to charge the drawer? Describe the nature or purport of any document that is necessary.*

As soon as possible after the non-acceptance or non-payment, it must, in order to charge the drawer, be protested. The protest is a solemn declaration, written by a notary under a copy of the bill, stating that payment or acceptance of it has been demanded and refused, the reason (if any) assigned for such refusal, and that the bill is consequently protested. This formality is required in case of dishonour of a foreign bill in conformity with the laws of most other countries, and because satisfactory evidence of dishonour is thus afforded to the drawer or indorser; for foreign Courts give credit to the acts of public functionaries in like manner as a protest under the seal of a foreign notary is good evidence of dishonour in our Courts (Broom's Common Law, 5th ed., 464; Byles on Bills, 11th ed., chap. 19; Smith's Man. Com. Law, 315). If the bill is not protested, the drawer and indorsers are discharged. (See the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), sects. 51 and 94.)

---

### BILLS OF SALE.

23. *First Case.*—*B. purchases certain household goods, and takes from the vendor an inventory and receipt for the purchase-money endorsed thereon. The Vendor, by the consent of B., remains in possession.*

*Second Case.*—*Goods seized by the sheriff under a writ of fi. fa., and sold by him, and he delivers an inventory and receipt for the*

*purchase-money to the purchaser, who allows the execution debtor to remain in possession of the goods.*

*Do the inventory and receipt in the above cases, or either, and which of them, amount to an "assurance" requiring registration under the Bills of Sale Acts? Give reasons.*

In the first case the inventory and receipt do amount to an assurance by the express terms of the Bills of Sale Act, 1878 (41 & 42 Vict. c. 31, s. 4), and such an inventory and receipt do also amount to an assurance within the Bills of Sale Act, 1854, sect. 7 (*Re Baum, Ex parte Cooper* (1), 48 L. J. Bcy. 40). The reason is because such inventory and receipt together form B.'s document of title to the goods.

In the second case, if the intention of the parties to the sale is to sell and purchase the goods without any writing, and the purchaser has not insisted upon having an inventory and receipt as his document of title to the goods, then the inventory and receipt will not be an assurance within the Bills of Sale Act, 1878, sect. 4, so as to require registration (*Marsden v. Meadows Salmon Claimant*, 51 L. J. Q. B. (App.) 536; L. R. 7 Q. B. D. 80). In this latter case the inventory did not require registration under the Bills of Sale Act, 1854 (*Woodgate v. Godfrey*, 48 L. J. Ex. 271; L. R. 4 Ex. D. 59). If, in the second case, from the nature or position of the goods the receipt and inventory were requisite to enable him to assert his title to the goods, or the purchaser absolutely refused to pay and delayed paying his purchase-money until the receipt and inventory were handed to him, thereby showing an intention to treat them as his documents of title, they would then require registration. (See *Indermaur's Law of Bills of Sale*, Appendix (2), p. 147.)

---

#### CARRIERS.

24. *B., a common carrier by sea, receives from D. a horse to be carried from London to Glasgow. During the voyage the ship encounters bad weather; the horse, in consequence of fright and struggling caused by such bad weather, dies. Is B. liable to D. for its loss? Give reasons for your answer, referring, if you can, to any case on the subject.*

A common carrier of goods is in the nature of an insurer at common law that he will receive and deliver the goods entrusted to his care within a reasonable time, saving only losses and injuries sustained thereto by either

- (1) An act of God ; or
- (2) The Queen's enemies ; or
- (3) Inherent vice in the goods ; or
- (4) The negligence of the owner of the goods occasioning such loss or injury.

The question in the above case is : Is B. liable, or is he excused because the loss was brought about by the act of God without any negligence on his own part. The answer is that he is not liable, for in order to bring himself within the exception of loss by the act of God the loss need not have been caused directly and exclusively by such a direct and violent and sudden and irresistible act of nature as the carrier could not by any amount of ability foresee, or (if he could foresee it) could not by any amount of care and skill resist so as to prevent its effect. A loss is a loss by the act of God if it is occasioned by the elementary forces of nature unconnected with the agency of man or other cause ; and a common carrier is entitled to immunity in respect of loss so occasioned if he can show that it could not have been prevented by any amount of foresight, pains and care reasonably to be required of him.

If the loss is occasioned partly by the act of God as above defined, and partly by some other cause, which, if it had been the sole cause of the loss, would have furnished a defence, the carrier will be entitled to immunity in respect of such loss if he can show that it could not have been prevented by any amount of foresight, pains and care reasonably to be required of him. (*Nugent v. Smith*, 45 L. J. C. P. (App.) 697 ; L. R. 1 C. P. D. 437.)

25. *A. sells to B. a quantity of goods, and delivers the same to a railway company to be delivered at their station, C., "to be left there till called for." On their arrival the goods are placed in the station warehouse. Before the goods are called for by the consignee, the warehouse is burned down by an accidental fire and the goods consumed. Has the consignee any, and if any, what, right of action against the railway company as common carriers*

*or otherwise for the loss of the goods? Give full reasons for your answer.*

The remedy (if any) of the consignee against the railway company will be either for breach of contract or a tort committed by them either as common carriers or as warehousemen. To render them liable as common carriers the goods must be shown not to have been delivered to the consignee either actually or constructively at the time they were destroyed by fire. The proof of this will depend upon the question whether, under the circumstances, they were in the warehouse a reasonable time. If they were there an unreasonable time, they will be deemed to have been delivered to the consignee, so far as the company are concerned as carriers. If the company are not liable as carriers, the only question remaining will be, was the destruction of the goods brought about by any default on the part of the company, for that and that only will create any liability on their part as involuntary bailees or warehousemen of the goods in question. The answer here is in the negative, for the fire was in this case accidental. Two days, in a similar case, was held to be an unreasonable time for the consignee not to call for the goods. (*Chapman v. G. W. Ry. Co.*, 49 L. J. Q. B. 420; and see *Lilley v. Doubleday*, 51 L. J. Q. B. 310.)

---

## CHARITIES.

*26. By what statute is the present law of mortmain governed, and what are its principal provisions? What is the effect of the statute upon a gift by will of real and personal estate to trustees, upon trust to sell and pay debts and legacies, and to apply the residue for charitable purposes; and how will such estate be administered?*

By 9 Geo. II. c. 36, and the subsequent Acts amending it, including 16 & 17 Vict. c. 137; 17 & 18 Vict. c. 112; 18 & 19 Vict. c. 124; 23 & 24 Vict. c. 136; 24 Vict. c. 9; 25 Vict. c. 17; 26 & 27 Vict. c. 106; 27 Vict. c. 13; 29 & 30 Vict. c. 57; 31 &

32 Vict. c. 44; 32 & 33 Vict. c. 110; 33 & 34 Vict. c. 34; 34 Vict. c. 13; and 35 & 36 Vict. c. 24. (See Haynes's Student's Statutes, 2nd ed., 17—28.)

The principal provisions of 9 Geo. II. c. 36, are sects. 1 and 2, which enact that any conveyance, settlement, or gift of land or of any interest therein, or of any incumbrance affecting land, or of any moneys to be laid out in or to be raised by the sale of land for any charitable purpose, must be made by deed, sealed and delivered in the presence of two witnesses, and must be enrolled in Chancery (now represented by the Royal Courts of Justice, Central Office) within six months after its execution, and such conveyance, &c., must be made to take effect in possession for the charitable use intended immediately from the making thereof, and be without any power of revocation, reservation, trust, condition, or limitation for the benefit of the donor or grantor. And if the conveyance, &c., is not made for a valuable consideration, the death of the donor within twelve calendar months after the execution of the deed renders it void. The consideration referred to in the 2nd section must be paid by the person for whose benefit the conveyance is made. But the Act makes an exception as to gifts in favour of the two English Universities and the Colleges of Eton, Winchester and Westminster, for the support and maintenance of the scholars only upon the foundation, and it does not extend to Scotland. Other partial exceptions have been made by the above cited amending Acts. (2 Prideaux, 11th ed., 397.)

In the case cited in the question the devise of so much of the residue to charitable purposes as consists of real estate is void under the above-named (Mortmain) Act. The way such an estate will be administered will be as regards the payment of the debts and legacies as if no legal objection existed to such a gift, and then after such debts and legacies have been satisfied so much of the residue as consists of pure personalty will pass to the charitable purposes declared by the will, and so much of the residue as consists of realty and impure personalty will fail and pass to the residuary devisee and legatee under the will, or, if none, to the heir at law and next of kin respectively, for it must be remembered *where the will does not expressly or by implication direct it*, assets will not be marshalled in favour of a charity. (Snell's Equity, 5th ed., 293—4.)

27. *Equity sometimes favours gifts to charities above those to individuals, and sometimes conversely. Give instances of each.*

*A testator gives a share of his residuary personal estate to charities. If it appear that such estate does not consist wholly of pure personality, how will the Court deal with the bequest?*

Charities are so highly favoured in the law that charitable gifts have received a more liberal construction than gifts to individuals. Thus:—

(1.) In regard to the want of proper trustees, if a testator makes a bequest for charity to such persons as he shall afterwards name executors, or to such persons as his executors shall name, and he appoints no executors, or the executors die in the lifetime of the testator, and no others are appointed; or if the trustees of a charitable legacy all die in the testator's lifetime; or if a corporation intrusted with a charity fails; the Court will execute the charity. So if a legacy is given to persons who have no legal corporate capacity to enable them to take as a corporation; as where a legacy is given to the churchwardens for a charitable purpose. And so if a corporation for whose use a charity is designed is not *in esse*, and cannot come into existence but by some future Act of the Crown.

(2.) The Court will supply all defects in conveyances, where the vendor is capable of conveying, and has a disposable estate, and the mode of conveyance does not contravene any statute.

(3.) In regard to the objects, it matters not how uncertain the persons or objects may be. For if a bequest is made in the most general and indefinite manner, simply for charitable uses or religious and charitable purposes, *eo nomine*, the Court will treat it as a valid charitable bequest, and will dispose of it for such charitable purposes as it shall think fit. But where the bequest may, in conformity to the express words of the will, be disposed of in charity of a discretionary private nature, or be employed for any general benevolent or useful purposes, or for any general purpose, whether charitable or otherwise, or for charitable or other general purposes, at discretion, the bequest will be void, as being too general and indefinite for the Court to execute, and the property will go to the next of kin. Hence, if a man bequeaths a sum of money to such charitable uses as he shall direct by a codicil annexed to his will,

or by a note in writing, and he leaves no direction by note or codicil, the Court will dispose of it to such charitable purposes as it shall think fit. But a bequest for such benevolent, religious, and charitable purposes, or for such charitable or public purposes, as the trustees should think most beneficial, is void.

Where the giver has specified any particular charitable object, which is contrary to the policy of the law, or from some other reason cannot be accomplished at all, or not in the way prescribed, the Court will devote the property to some other charitable purpose, if the nature of the gift, or the concurrence of other charitable gifts in the same instrument, indicates that although the specified object was the favourite, yet it was not the exclusive object of the giver, but that he would have substituted some other charitable object, had he imagined that his favourite design might possibly be incapable of being accomplished. But where no such indication appears (as where the testator's object is to build a church at W., and that cannot be effected) the next of kin will take. Where there are no objects *in esse*, but some may arise, the Court will keep the fund for them. And when there can be no such objects as those which are specified, or when the specified objects cease to exist, the Court will remodel the charity.

(4.) In regard to surplus income, if a testator clearly shows an intention to devote the whole income of a property to charitable purposes, it will be so applied, although his specific charitable dispositions do not exhaust the whole income. And when the increased revenues of a charity are more than sufficient for the specified objects of charity, the surplus will not go to the heir at law or next of kin of the founder, but will be applied to the augmentation of the benefits of the charity or to other charitable purposes.

Where money is bequeathed to charitable purposes abroad, the Court will secure the funds and cause the charity to be administered under its own direction, provided the charitable purposes are to be executed by persons residing within the jurisdiction of the Court. But this will not be done if the objects of the charity are against law or public policy, unless the principle of such policy or law is of a national or conventional, rather than of a universal and moral or religious character. (Smith's Man. Eq., 12th ed., 162—166.)

In the above case, as the Court, in the absence of a contrary

intention being shown by the will, does not marshal assets in favour of a charity, and the property, which can only be given by will to a charity (*i.e.*, the pure personalty), is insufficient in quantity to give full effect to the gift by the will, the Court will appropriate the residuary personal estate as if no legal objection existed as to applying any portion of it to the charity, and such proportion of the share given to the charity will be held to fail as would in that way fail to be paid out of the prohibited fund. (H. A. Smith's Equity, 30.)

---

### CHEQUES.

28. *If a draft to his order be delivered by A. to another (say C.), indorsed by A. specially to B., and such delivery is made for the purpose of handing the draft to B., and the draft be misappropriated by C., who forges the indorsement of B., and hands the draft to his (C.'s) bankers for collection, who receive the amount, has A. any, and if any, what, remedy against the bankers to recover the amount? State the general principles of law applicable to this question, and cite any case which governs it.*

The bankers upon whom the cheque is drawn are not liable for paying a cheque of their customer's bearing a forged indorsement, for they are specially protected by statute (the Bills of Exchange Act, 1882, sect. 60, and 16 & 17 Vict. c. 59, s. 19, which is still unrepealed). It has been decided that 16 & 17 Vict. c. 59, s. 19, does not protect any third person to whom a cheque is indorsed by a forged signature, but only the banker on whom it is drawn, and if such third person cashes such a cheque he will be liable to refund the money received by him in respect of that cheque to the drawer. (*Ogden v. Bevas and Another*, 43 L. J. C. P. 259.)

C.'s bankers will not be liable because C. will have crossed it to his bankers generally or specially, and they will have received payment from the drawer's bankers in good faith and without negligence, so as not to have incurred any liability to A., the true owner of the cheque, by reason only of having received such payment within the terms of the statute in that behalf (the Bills of



Exchange Act, 1882, sect. 82), and this is so, though the words "not negotiable" do not appear on the face of the cheque. (*Matthiesson and Another v. The London and County Banking Co.*, 41 L. J. C. P. 529; L. R. 5 C. P. 7.)

The general rule is that no title can be derived from a forgery, and consequently, but for the above statutory enactments, both the banks would be liable to A., the true owner of the cheque.

29. *The payee of a cheque handed it to his clerk to pay into a bank. The clerk absconded with it, and, after altering the date from the 2nd to the 26th of March, passed it for value to B. Payment of the cheque was refused by the banker, the drawer having stopped payment. B., who had not been guilty of any negligence in taking the cheque, thereupon brings an action against the drawer for the amount of the cheque. Can he recover? Give reasons for your answer.*

Yes, owing to the combined effect of sect. 73, and the proviso to sect. 64 of the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), which alters the previous law in favour of "a holder in due course" like B. Previously the cheque was void in B.'s hands, because it was altered, though by a stranger, for the date is a material part, and the fact of his not being guilty of negligence was immaterial. (See *Vance v. Lowther*, 45 L. J. Q. B. 200; L. R. 1 Ex. D. 176; Smith's Man. Com. Law, 335.)

Where a Bank of England note, the number of which was erased and another number substituted, came into the hands of one Suffell—a *bonâ fide* holder for value—it was held that he could not sue the Bank of England upon it as the alteration was a material one, and avoided the instrument. (*Suffell v. Bank of England*, 51 L. J. R. Q. B. (App.) 401.)

The privileges of the Banks of England and Ireland are unaffected by the Bills of Exchange Act, 1882, sect. 97, sub-s. 30. (See *Master v. Müller*, 1 Sm. L. C. 871; Haynes's Student's Leading Cases, 58; *Aldous v. Cornwell*, L. R. 3 Q. B. 573; Chalmers' Bills of Exchange Act, 1882, pp. 46, 53 and 65.)

## COMPANIES.

30. *What provisions must the memorandum of association contain in the case of a company limited by shares? Can the objects or scope of the company as defined by the memorandum of association be extended after registration; and, if so, how can such change be ratified?*

The memorandum of association of a company limited by shares must contain the following things:—

- (1.) The name of the company with the addition of the word "limited," as the last word of such name.
- (2.) The part of the United Kingdom in which the registered office of the company is proposed to be situate.
- (3.) The objects for which the company is to be established.
- (4.) A declaration that the liability of the members is limited.
- (5.) The amount of capital with which the company proposes to be registered, divided into shares of a certain fixed amount, subject to the following regulations:—
  - (a.) That no subscriber shall take less than one share.
  - (b.) That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes (25 & 26 Vict. c. 89). (Williams' Personal Property, 10th ed., 248; Haynes's Student's Statutes, 2nd ed., 37—38.)

The objects or scope of the company as defined by the memorandum of association may be extended after a registration only in the cases provided for by statute, which are as follows.

The Companies Act, 1862, sect. 12, provides:—

Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid up shares into stock, but, save as aforesaid, and save as is hereinafter provided, in the case of a change of name, no alteration shall be

made by any company in the conditions contained in its memorandum of association.

And the same Act, sect. 52, provides that:—

A resolution passed by a company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled according to the regulations of the company to vote as may be present, in person or by proxy (in cases where by the regulations of the company proxies are allowed), at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled according to the regulations of the company to vote as may be present, in person or by proxy, at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month, from the date of the meeting at which such resolution was first passed; at any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same; notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company; in computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company.

The Companies Act, 1867 (sects. 9, 10, 11, 18 and 21), provides:—

Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any company shall come into operation until an order of the Court is registered by the registrar of joint-stock companies. (Sect. 9.)

The company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the Court may fix, the words "and reduced" as the last words

in its name, and those words shall until such date be deemed to be part of the name of the company within the meaning of the principal Act. (Sect. 10.)

A company which has passed a special resolution for reducing its capital may apply to the Court by petition for an order confirming the resolution, and on the hearing of the petition, the Court, if satisfied that with respect to every creditor of the company who under the provisions of this Act is entitled to object to the reduction, either his consent to the resolution has been obtained, or his debt or claim has been discharged or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction, on such terms, and subject to such conditions as it deems fit. (Sect. 11.)

A minute, when registered, shall be embodied in every copy of the memorandum of association issued after its registration; and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding £1 for each copy in respect of which such default is made, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty. (Sect. 18.)

Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed or as altered by special resolution, as by sub-division of its existing shares, or any of them, to divide its capital, or any part thereof, into shares of smaller amount than is fixed by its memorandum of association: provided that in the sub-division of the existing shares the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share, or shares, from which the share of reduced amount is derived. (Sect. 21.)

The statement of the number and amount of the shares into which the capital of the company is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution. Penalty for default the same as in sect. 18. (Sect. 22.)

The Companies Act, 1877, amends that of 1867, and provides that—

Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital by cancelling any shares which at the date of the passing of such resolution have not been taken or agreed to be taken by any person; and the provisions of the Companies Act, 1867, shall not apply to any reduction of capital made in pursuance of this section. (Sect. 5.)

The Companies Act, 1880, provides that—

When any company has accumulated a sum of undivided profits, which, with the consent of the shareholders, may be distributed among the shareholders in the form of a dividend or bonus, it shall be lawful for the company, by special resolution, to return the same, or any part thereof, to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount. The powers vested in the directors of making calls upon the shareholders in respect of moneys unpaid upon their shares shall extend to the amount of the unpaid capital as augmented by such reduction. (Sect. 3.) (Haynes's Student's Statutes, 2nd ed., 37, *et seq.*)

31. *Is a company responsible to any, and if so to what, extent, for the misrepresentations and frauds of its agents?*

*The directors of an insurance company are convicted of conspiring with certain loan agents, who, by promises of loans, induced persons to take out policies in the company, paying premiums on which the directors and agents received commissions. Can the company be made liable to any and what extent by the aggrieved parties?*

Such a company is responsible to the same extent as the assets are increased or benefited by such misrepresentations and frauds, but no further. It is because of this and because such companies usually are insolvent that the agents (*i.e.*, usually the directors) are added as defendants with the company, for the latter will be liable to the extent that the plaintiff is proved to be injured, and that without any right to claim contribution.

In the case quoted the company can be made liable by the aggrieved parties to the extent of the value of the premiums received by the company. The aggrieved parties will also have a

civil remedy against the directors and loan agents individually as well as jointly (Buckley's Companies Acts, 4th ed., 96, 113; *Blake v. The Albion Life Assurance Society*, 48 L. J. C. P. 169; L. R. 4 C. P. D. 94). It is only carrying out the old principle that no one shall take advantage of his own wrong. (See *The Phosphate Sewage Co., Limited, v. Hartmont*, 45 L. J. Ch. 465; L. R. 5 Ch. D. 394; *Lindsay v. Cundy* (H. L.), 47 L. J. Q. B. 481; L. R. 3 App. Cas. 459.)

32. *State the enactment in the Companies Act, 1867, as to payment of the full amount of shares in cash.*

*The capital of a limited company consists of £100 shares, on each of which £50 has been paid. The company agrees to purchase a property from a shareholder in consideration of a credit of £50 each on his shares, which are thus to be treated as fully paid up. Does this transaction require a registered contract to support it? Give full reasons for your opinion.*

The enactment referred to is the Companies Act, 1867 (30 & 31 Vict. c. 131, s. 25), by which it is provided that every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing and filed with the registrar at or before the issue of such shares. (Haynes's Student's Statutes, 2nd ed., 69.)

The above case illustrates this 25th section, for there the payment or consideration for the shares is neither an actual cash payment or equivalent to one as amounting to an exchange of cheques. It, therefore, will be necessary that a written contract shall be drawn up and executed by all parties prior to the allotment of the shares upon which £50 is to be credited, and which are to be treated as fully paid up to prevent the shareholder vendor from being made a contributory should the company be wound up. For a case where the facts were decided to amount to an exchange of cheques, see *Spargo's case*, 42 L. J. Ch. 488; L. R. 8 Ch. D. 407; and for a case where a contract should have been executed under sect. 25, see *Pagin v. Gills*, 46 L. J. Ch. 779; L. R. 6 Ch. D. 681.

33. *What provision has been made by the legislature to prevent frauds committed by shares being treated as paid up in full?*

*A. agrees with a company that he shall be credited with the price of certain property sold by him to the company, and debited with the price of shares taken by him in part payment. Is such an agreement valid without further formalities?*

As to former part of the question, see answer to Question 32.

Yes, because it resembles *Spargo's case*, *supra*, where the transaction amounts to a transfer of cheques.

34. *A creditor obtains a judgment against a limited company and issues execution, and about the same time the company is ordered to be wound up. What is the position of the creditor according as the winding-up proceedings precede or follow the judgment or execution, and what course would you recommend him to adopt?*

If the creditor has not obtained judgment, or having obtained judgment has not issued execution before the commencement of the winding up, he can only prove under the winding up for his claim and costs then incurred. Should he (not having obtained judgment) attempt to proceed to judgment his action will be stayed upon an application being made by motion by the petitioning creditor of the company, or liquidator or receiver of the company (if any), before the Division of the High Court in which his action is proceeding. If he has issued execution and levied under it prior to the commencement of the winding up, he will be deemed a secured creditor according to the value of the property levied upon, providing he is first in the field, and there are no prior equities, as, for instance, in favour of the company's landlord, or the holder of a duly registered bill of sale. Even under such favourable circumstances he cannot realise his security without first obtaining the leave of that branch of the High Court in which the winding up is proceeding, owing to the provisions of sect. 85 of the Companies Act, 1862. If he thereby becomes a secured creditor he must, after allowing for the value or amount realised by his security, prove for any balance due to him in respect of his debt and costs under the winding up (see Haynes's *Student's Statutes*, 2nd ed., 55). Sometimes the

Court has allowed a seizure after petition. (*Re Bastow & Co.*, L. R. 4 Eq. 681.)

35. *Enumerate the circumstances under which a registered company may be compulsorily wound up by the Court.*

*Can an association not complying with the provisions of the Companies Act, 1862, be wound up by the Court?*

A company, under the Companies Act, 1862, sect. 79, may be wound up compulsorily by the Court, under the following circumstances:—

(1.) Whenever the company has passed a special resolution requiring the company to be wound up by the Court.

(2.) Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year.

(3.) Whenever the members are reduced in number to less than seven.

(4.) Whenever the company is unable to pay its debts.

(5.) Whenever the Court is of opinion that it is just and equitable that the company should be wound up.

As the fact of a company being unable to pay its debts is difficult for an outsider to ascertain, and still more difficult to prove, sect. 80 of the Companies Act, 1862, provides a means of ascertaining this by enacting that on default for the space of three weeks to pay, secure, or compound a creditor's debt of £50 or upwards, when the company is called upon to do so by notice under hand, left at the company's registered office, the company is to be deemed to be unable to pay its debts.

An association or company which is illegal (or, *per* Brett, L.J., non-existing) by force of sect. 4 of the Companies Act, 1862, cannot be wound up by the Court under the 199th section of that Act, and the Court has no jurisdiction to make an order for winding up such a company (*Re The Padstow Total Loss and Collision Assurance Association, Ex parte Bryant*, 51 L. J. R. Ch. 344).

An association, however, which is *not* illegal by force of sect. 4 of the Companies Act, 1862, can by sect. 199 be wound up by the Court.



36. *Enumerate in their usual order the chief steps in the compulsory winding up by the Court of a limited company.*

(1.) The presentation and answering of the petition, which must be made either by a creditor, or a shareholder, who has been such for six months, or is the original allottee, or the company, in pursuance of a resolution.

(2.) The advertisement and subsequent hearing of the petition, which may be preceded or succeeded by an *ex parte* application of the petitioners to stay pressing creditors from proceeding with their actions, executions or distresses either until the hearing of the petition, or except under the winding up proceedings, as the case may be, and if necessary for the appointment of a provisional official liquidator or a receiver (*Re The General Financial Bank*, 51 L. J. Ch. 490), and the order to wind up.

(3.) Advertisement of appointment in chambers to appoint the official liquidator, and the subsequent appointment and fixing his security.

(4.) Appointment of his solicitors and taxation and payment of petitioner's costs down to the liquidator's appointment.

(5.) Settling the A. list of contributories, and about the same time takes place the

(6.) Advertising for creditors and settling the list of creditors.

(7.) Making and enforcing the first and any subsequent calls made upon the contributories, after exhausting which takes place the

(8.) Settling of the list B. of the contributories.

(9.) Making and enforcing the first and any subsequent calls made upon the B. list of contributories.

(10.) Declaration and payment of the first and subsequent dividends.

(11.) Taxation and payment from time to time of the liquidator's costs.

(12.) Taxation of costs by anticipation to the end of the winding up.

(13.) Order finally dissolving the company and disposing of all outstanding matters in connection therewith, and the vacation of the liquidator's recognisance and destruction of the company's books, papers, and file of proceedings.

37. *Has any alteration been made by the Judicature Acts in the winding up of companies in respect of proof of debts and executions on the assets of companies?*

Yes, as to the proof of debts, for by sect. 10 of Judicature Act, 1875, it is provided (*inter alia*) that in the winding-up of any company under the Companies Acts, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of any such company may come in under the winding-up of such company and make such claim against the same as they may respectively be entitled to by virtue of that Act.

It has been decided (*In re The Withernsea Brick Works, Limited*, 50 L. J. Ch. 185; L. R. 16 Ch. D. 337) by the Court of Appeal that this section merely abrogates the old rule which obtained in Chancery in the winding up of companies, and which was to the effect that a creditor holding security for his debt was entitled to prove for the whole of his debt without making any deduction in respect of his security, provided he did not receive altogether more than twenty shillings in the pound for his debt, and substitutes therefor the rule in bankruptcy that a secured creditor can only prove for the balance of his debt after realising his security or giving credit for its value. The section does not introduce into the practice applicable to the winding-up of companies any of the rules in bankruptcy as to the avoidance of securities any more than it introduces the bankruptcy rules as to fraudulent preference or order and disposition into such practice. Where, therefore, a judgment creditor of a company issued a *fi. fa.* under which the sheriff seized, but before sale a petition was presented against the company on which a winding-up order was subsequently made, it was held in the last named case that the judgment creditor was a secured creditor of the company.

Neither the above section nor any other section of the Judicature Acts has made any alteration in regard to executions on the assets of companies.

38. *On the winding-up of a limited company, it is found that the Register of Members includes the following persons:—(a.) a married woman without separate estate; (b.) one with separate estate having taken shares before marriage; (c.) an infant; (d.) a trustee; (e.) a person known to be a mortgagee of the shares. Who ought in these several cases to be placed on the list of contributories?*

(a.) The married woman, because the company has accepted her liability, knowing her to be a married woman, as a shareholder, and neither her husband, nor his executors, will be liable to be placed on the list (*Re The London, Bombay and Mediterranean Bank, Limited*, 50 L. J. Ch. 557). If she is proved to have obtained the shares by fraudulently representing herself as a single woman, or as her husband's nominee, and her husband turns out to have been the real shareholder, he would then be liable to be placed on the list.

(b.) In addition to the wife the husband may be placed on the list as a contributory under sect. 78 of the Companies' Act, 1862, for he by the marriage became the debtor to the company, so far as contribution is concerned, and not merely the husband of the debtor. (*In re The West of England and South Wales District Bank, Hatcher's Case*, 48 L. J. Ch. 723; L. R. 12 Ch. D. 284. But now the wife is primarily liable (45 & 46 Vict. c. 75, s. 14).)

(c.) The infant is not liable by virtue of 37 & 38 Vict. c. 62; but the real shareholder is liable to have his name substituted for the infant's on the liquidator's application. (*Nickalls v. Merry*, 45 L. J. Ch. 575; L. R. H. L. 7 E. & I. App. 530; *Heritage v. Payne*, 45 L. J. Ch. 295; L. R. 2 Ch. D. 594.)

(d.) The trustee. He is personally liable, but he has a right of indemnity against all his trust estates, which, however, may or may not be of any value. (*Re West Hartlepool Iron Co., Ex parte Gray*, 45 L. J. Ch. 342.)

(e.) The mortgagee, if he is a legal mortgagee, is personally liable; but he has a right of indemnity against his mortgagor which may or may not be of value, and also against the shares, the proceeds of which, on sale by him, could be applied after payment

of his own debt and interest and expenses of sale in payment of the amount of the contribution with interest thereon at £4 per cent., unless this is provided for in the mortgage, as is usually done, and that the interest should be at the same rate as is payable on the debt, and in either case the balance is payable to the mortgagor. If, however, the mortgagee is only an equitable mortgagee by deposit, with or without a written agreement, the mortgagor is only liable to be placed on the list. (*The Patent Paper Manufacturing Co., Addison's Case*, L. R. 5 Ch. App. 294; *Weckersheim's Case*, L. R. 8 Ch. 831; *Sichel's Case*, L. R. 3 Ch. 119; Buckley on Companies, 3rd ed., 62—67.)

39. *A shareholder in an unlimited company registered under the Companies Act, 1862, sells and transfers his shares, and thereby ceases to be a member. Does he, in the event of the subsequent winding-up of the company, remain liable to any, and what, extent, to contribute to the assets and debts of the company?*

He does not remain liable to contribute anything to the assets of the insolvent company under the winding-up upon the happening of either of the following events:—

(1.) If he ceased to be a member for one year at the least prior to the presentation of the petition upon which the winding-up order has been made.

(2.) If there are no debts or liabilities contracted by or on behalf of the Company, except those contracted after the time at which he ceased to be a member.

(3.) If the existing shareholders are able to satisfy the contributions required to be made by them in pursuance of the Companies Acts.

If none of these grounds of exemption from liability exist, he remains liable to contribute to the assets to meet the debts of the company until all the debts and costs and expenses of winding-up are paid, but only as a past member (*i.e.*, in list B. of the contributories); and, therefore, only after the first (or A.) list of contributories is exhausted. (Williams' P. P., 10th ed., 256; 25 & 26 Vict. c. 89, s. 38.)

## CONDITIONS.

40. *State the difference in construction of gifts upon conditions precedent and conditions subsequent in respect to marriage, and illustrate by examples. Is a gift over on the second marriage of a man valid?*

As regards the validity of gifts in restraint of marriage, to which this question refers, the distinctions between conditions precedent and conditions subsequent are peculiar. In the former case the estate does not vest in the beneficiary until the condition is complied with. The condition opens the door to a benefit, and is, therefore, entitled to a favourable construction and to support, if at all reasonable. But a condition subsequent only operates after the estate has vested in the beneficiary, and its effect, being thus penal, is to be strictly construed. For examples :—

First, as to conditions precedent.

A condition precedent attached to a voluntary disposition of land is illustrated by cases in which a devise is made, or a portion directed to be raised out of land, on the condition of the beneficiaries marrying only with the consent of certain persons. Such a condition is valid, and no estate vests until it is complied with.

As regards conditions precedent, moreover, the rules applicable to gifts of personalty are the same; with, perhaps, the single difference that in this case, if consent is required, the restriction can only be applied until the attainment of a reasonable age, unless there is a gift over of the property in case of marriage at any time without consent.

The case of conditions subsequent is more complex.

It is necessary here to distinguish between a condition imposing a particular restraint and one which would have the effect of restraining marriage generally. Whether the property concerned be real or personal, it is permissible to bestow it subject to a condition subsequent prohibiting marriage with a particular person, or with a native of a particular country, or belonging to a particular religious body; or marriage may be forbidden until the attainment of a reasonable age, which is not restricted to majority. But it seems that, at least with regard to personal property, the condition in this case will be considered as merely *in terrorem*, and will not be insisted on, unless there is a gift over on breach of the condition.

Conditions subsequent in general restraint of marriage attached

to a gift of personal property are, *prima facie*, void, and the gift remains unaffected thereby. An instance of this is where a testator makes a bequest to a legatee with a direction that in case of his or her marriage the property shall pass to another. And the same rule applies in the case of a mixed fund, and also, it seems, to a legacy to be raised by the conversion of land. The fact that there is a gift over will not in any of these cases save the condition.

But, nevertheless, where the gift is to a woman, and the intention of the donor appears to be not to restrain marriage, but merely in good faith to make a provision for her as long as she remains single, a limitation of personal property until marriage has been sustained. The distinction of principle between these two cases is clear enough, though its application may on the facts often be difficult.

A condition subsequent in general restraint of marriage, attached to a gift of real estate, is, it seems, valid ; *a fortiori*, if, in this case the intention appears to be to create a provision for a woman until marriage.

It must be observed that conditions in general restraint of marriage are always valid in gifts to widows, and are indeed matters of every-day occurrence ; and this not only in the case of a bequest by a testator to his own widow, but also in a gift to the widow of another person. A gift over on the second marriage of a man has also been sustained. (*Allen v. Jackson*, L. R. 1 Ch. D. 399 ; H. A. Smith's Principles of Equity, 161, 162.)

---

## CONSTITUTIONAL LAW.

41. *A. is duly registered and entitled to vote at an election for members of parliament. The returning officer refused to admit his vote. Has A. under any, and what, circumstances a right of action in respect of such refusal, and, if so, against whom? Does it make any, and if any, what, difference if the candidate for whom A. intended to vote is elected? Refer if you can to any leading case on the subject.*

The facts as above stated are identical with those in the leading case of *Ashby v. White* (14 State Trials, 695 ; Haynes's Student's

Leading Cases, 41). If the returning officer, on A.'s application to vote, refuses to let him do so, A. has a right of action against the returning officer because there exist the two necessary elements to give a right of action, viz., (1) a legal right in A. to vote; (2) the prevention of A.'s exercise of his legal right by the returning officer. It will not be necessary for A. to prove that he sustained actual injury, and therefore the fact that the candidate for whom A. intended to vote was elected will not preclude A. from recovering some, though it be only nominal, damages. That case was decided upon the common law maxim, "*Injuria sine damno oritur actio.*" (Broom's Common Law, 91.)

---

### CONTRACTS.

42. *What are the three chief contracts which are held to be illegal at common law as being in violation of public policy and the interests of the State, and, if you can, give an example of each.*

(1.) Contracts in general restraint of trade—as, for example, where on the sale of the goodwill of a miller's business the vendor covenants never to use or carry on his trade as a miller in any part of England for the rest of his life, such a covenant is void. (See *Mitchell v. Reynolds*, 1 Smith's L. C. 406; 1 P. Wms. 181; and notes; Haynes's Student's Leading Cases, 54).

(2.) Contracts in general restraint of marriage—as where A. enters into a bond that he will remain a bachelor all his life.

(3.) Contracts respecting the sale and transfer of public appointments—as, for example, an agreement between the corporation of a borough and a clerk of the peace appointed by them that he should be paid in future a salary, and account to them for the fees of his office received by him. This was held void on the ground of public policy.

Other kinds of contracts, held to be illegal at common law as being in violation of public policy and the interests of the State, are contracts affecting the course of justice, contracts affecting the revenue of this country, contracts violating the law of maintenance and champerty, agreements to fight, as tending to create a breach of the peace, &c., &c. (Chitty on Contracts, 10th ed., 613—626.)

43. *A. verbally agrees to buy of B. a crop of grass growing on a certain close, to be cleared by the end of July, at £6 per acre; half the price to be paid down before any of the grass is cut. A. does not pay. Can B. enforce the agreement? Give reasons for your answer.*

No, B. cannot, because the agreement is not in writing so as to satisfy the 4th section of the Statute of Frauds, the agreement in this case being a contract or sale of lands, or an *interest in or concerning them*. And there is here no part performance by the parties so as to take the agreement out of the statute. (*Crosby v. Wadsworth*, 6 East, 602; Broom's Common Law, 5th ed., 387; Chitty on Contracts, 10th ed., 274.)

44. *Contract for the sale of 200 tons of potatoes off a certain piece of land, which in ordinary years was amply sufficient to produce such a crop, but owing to blight only produced 80 tons, which were delivered to the purchaser. Can he maintain an action against the vendor for the remaining 120 tons?*

No, he cannot, as the contract is a contract to deliver a specific thing in the sense that it is a contract to deliver a particular portion out of a specific thing (*Howell v. Coupland*, 43 L. J. Q. B. 201; L. R. 1 Q. B. D. 258; following *Taylor v. Caldwell*, 3 B. & S. 826; 32 L. J. Q. B. 164). "The reasoning upon which the case of *Taylor v. Caldwell* was founded was that in a contract for the delivery of a specific thing the law makes it part of the contract that the thing shall be in existence when the time comes for the fulfilment of the contract. The same reasoning applies where it is for the delivery of a portion out of a specific thing; for example, a contract to deliver so many tons of sugar out of a particular cargo. There the sugar contracted for would be part of a particular quantity; but if when the time arrived for the completion of the contract the ship were lost, I take it that it would be implied from the terms of the bargain that it should be at an end if the whole quantity of the sugar had perished without default on either side." (Per Blackburn, J., in *Howell v. Coupland*, *supra*; see also *McLay v. Perry*, 44 L. T. 152; Chitty on Contracts, 10th ed., 665.)



45. *C. and D. were negotiating for the supply by the former to the latter of a certain machine for a particular purpose, to be delivered by the end of the following April. B. was employed by C. to make a part of the machine, and B. contracted to make it "as soon as possible," knowing, however, when he so contracted, the time by which the whole machine was to be delivered. B. did not complete his part of the work until the end of May. D. then refused acceptance. Has C. any remedy against either D. or B. for breach of contract, and what will be the measure of damages, if any?*

D. being justified in his refusal to accept the machine, C. has no remedy against him.

C., however, has a remedy against B. for the breach of his contract, and the measure of damages will be the amount of the expenses he has been put to in making other parts of the machine than those made by B., and the loss of profit which he incurred through C.'s non-performance of the contract. (The facts were identical in *The Hydraulic Engineering Co. v. McHaffie* (App.), L. R. 4 Q. B. D. 670; 27 W. R. 221.)

46. *B., a broker, acting for C., made a contract for the sale of goods to D., sending a note to each party, but signing only the one which was sent to the seller. The broker entered the contract in his book, in which he signed both the bought and sold notes. D. kept the note which was sent to him without objection until called upon to accept the goods, when he repudiated the contract, on the ground that the note sent to him was not signed. Give your opinion, with reasons, as to the right of the seller to enforce the contract against the buyer.*

The seller is entitled to enforce the contract against D., the buyer, on the ground that where a broker is employed to buy or sell goods for one person, and he agrees with another for their sale or purchase, he is considered to be the agent of both; and his signature to either the bought or the sold note will bind both parties within the Statute of Frauds. And it would appear that if there be a good note in the broker's book, but no bought or sold notes, the note in the broker's book, signed by him, will be good evidence of the contract to satisfy the statute. (*Chitty on Contracts*, 10th ed., 363, 364.)

47. *A. buys from B. certain bales of Manila hemp—so described in the contract—expected to arrive by ships named from abroad. Vessels arrive at Liverpool and hemp delivered damaged so as to be unmerchantable, but being properly described as Manila hemp. A. had no opportunity before the purchase of inspecting the hemp. Is or is not A. entitled to repudiate the contract, and upon what grounds?*

In the above case there is an implied warranty that the goods shall answer the description given of them in the contract, and, as A. had no opportunity of inspecting the hemp before the purchase, that the hemp is saleable or merchantable under that description. A. is therefore here entitled to have deducted from the purchase money the difference between the value of the hemp as it actually arrived and the value of the hemp as it ought to have arrived. If he has paid for the goods, A. can sue B. for that difference upon discovering the breach of the implied warranty. (See *Jones v. Just*, 37 L. J. Q. B. 89; 9 Best & S. 141; L. R. 3 Q. B. 197. Chitty on Contracts, 10th ed., 412; Addison on Contracts, 7th ed., 493.) The maxim *caveat emptor* does not apply as the purchaser had no opportunity to inspect the goods before the purchase. (*Jones v. Just*, *supra*.)

48. *Give your opinion, with reasons for it, as to the liability of the defendant in the following case:—*

*Plaintiff, on the verbal order of the defendant, shipped certain goods from abroad to this country at the price of £200. On arrival the goods were sent to a shipping agent of the plaintiff's, who received and warehoused them with a wharfinger, informing the defendant of their arrival. The wharfinger handed to the agent a delivery warrant whereby the goods were made deliverable to him or his assignees by indorsement on payment of rent and charges. The agent indorsed and delivered the warrant to the defendant, who kept it for several months, and did not pay either the price of the goods or the charges upon them, nor did he return the warrant, but repudiated the contract altogether, whereupon the plaintiff brought an action against him for the price of the goods.*

In our opinion the defendant will not be liable, because there is no acceptance though there is a delivery of the goods sold within the meaning of the 17th section of the Statute of Frauds. There is no

part payment, nor anything given in earnest, nor memorandum in writing signed by the defendant or his agent, which are the other alternatives required to comply with that section. (See *Farina v. Home*, 16 M. & W. 119, 123; Chitty on Contracts, 10th ed., 366.)

49. *Contract for building a ship, payment of the price to be by instalments, payable at certain stages in the advancement of the work, and that the building is to be done under the superintendence of the purchaser's agent. At what period will the property in the ship pass to the buyer?*

The respective instalments will not be paid until the purchaser's agent is satisfied that the respective stages in the advancement of the work have been reached for such instalments to become due as stipulated in the contract. When these respective instalments are paid, the effect of each such payment will be to appropriate specifically to the purchaser the ship so in progress, and to vest in him a property in that ship. For instance, on the first instalment being paid, the property in the portion of the ship then finished vests in the intended purchaser, subject to the right of the builder to retain such portion for the purpose of completing the work, and when each material is subsequently added it becomes, as it is added, the property of the purchaser as general owner. It has been also decided that things which had once been fitted to the ship and formed part of her would also pass, even although at the moment they were not actually attached to the ship; but that things which had been merely bought for the ship, though they were intended for it, would not pass. (Chitty on Contracts, 10th ed., 353.)

---

### CONVERSION.

50. *What is the general rule as to conversion? A testator directs his real estate to be sold, and bequeaths the proceeds to three legatees. In consequence of the death of one of them in the testator's lifetime, he dies intestate as to that share. Who takes it on his death?*

The general rule is well stated by Sir T. Sewell, M.R., in the leading case of *Fletcher v. Ashburner* (1 Wh. & Tud. L. C. Eq.

896 ; Haynes's Student's Leading Cases, 165), where he says in his judgment : " Nothing is better established than this principle : that money directed to be employed in the purchase of land and land directed to be sold and turned into money are to be considered as that species of property into which they are directed to be converted ; and this in whatever manner the direction is given, whether by will, by way of contract, marriage articles, settlement or otherwise ; and whether the money is actually deposited or only covenanted to be paid, whether the land is actually conveyed or only agreed to be conveyed, the owner of the fund or the contracting parties may make land money or money land. The cases establish this rule universally."

The above case is one of partial conversion of land into money by will. The lapsed share will devolve upon the heir-at-law, because it is to him the law gives the real estate in the absence of an express disposition by its owner in favour of some one else, and the Court will not construe this will as expressing indirectly an intention to exclude the heir-at-law at all events, but only in the event of the will taking effect over the whole and every part of the real estate (*Ackroyd v. Smithson*, 1 Wh. & T. L. C. Eq. 949 ; Haynes's Student's L. C., 167). The heir, however, takes it as personal estate. (*Smith v. Claxton*, 4 Mad. 492 ; H. A. Smith's Equity, 438.)

51. *Explain and illustrate the doctrine of conversion. A. grants leases of two houses to B., with options to purchase. A. dies intestate, as to real estate, except as to one house, which he specifically devises to C., by a will made subsequently to the leases. After A.'s death, B. exercises his option to purchase both houses. What is the effect of this ?*

The doctrine of conversion is explained and illustrated by the last answer, *supra*. For further information, see the leading cases thereon, and notes to those cases contained in Haynes's Student's Leading Cases, 164—172, *e.g.*, *Fletcher v. Ashburner* (also in 1 Wh. & Tud. L. C. Eq. 896) and *Cogan v. Stevens* (also in 1 Wh. & Tud. L. C. Eq. 970), besides *Ackroyd v. Smithson*, *supra*.

There are two classes of cases which are exceptions to the rules upon this doctrine of conversion as usually enunciated. They are

(1) sale under the order of a competent Court, of real estate, which order effects an absolute conversion according to the modern cases until the order is reversed, and (2) leases where an option is given to the lessee only thereunder to declare an option to purchase the freehold reversion at any fixed or unlimited time as mentioned in the lease.

The authorities have long ago decided that in a case like the above the purchase money arising out of the specifically devised house will belong to the specific devisee, whilst the purchase money of the other house will belong to the personal representative of A. upon trust for his next of kin. The first house will so pass on account of the presumed intention of the testator by mentioning the house by name to give the devisee the house or its value. The second house will so pass because there is an absolute conversion of the land after the option is shown into money, and there is no will to show the testator's intention to be contrary to what the law provides for the disposal of money. (Snell's Equity, 5th ed., 187, 188.)

*52. An owner of freehold land, which a railway company are entitled to take under their compulsory powers, having received notice to treat, demands a price which the company refuses to pay, and the price is thereupon referred to arbitration under the Lands Clauses Consolidation Act. Before award the owner dies intestate, and the company shortly afterwards pay the price which he had asked into Court, and take possession. Is the heir at law or the administrator of the deceased owner entitled to the money so paid into Court? Give the grounds of your answer.*

This is a case relating to conversion by "authority paramount," i.e., the Lands Clauses Consolidation Act. The administrator is, in our opinion, entitled to the money so paid into Court, but as there appears to be no authority directly on the point, this opinion must be taken with some qualification by the reader. The grounds of our answer are as follows :—

The property here has been acquired by the means provided by the Legislature, because the owner refused to consent by contracting for the sale. The means adopted by the company are (1) giving the notice to treat, and as the parties cannot come to terms, (2) arbitration, which latter the company waive their right to, so they

(3) pay the purchase money at which the land was offered to them into Court under the Act, and (4) thereupon they take possession. Neither of these things could have been done without the assistance of the Act in the absence of a valid contract between the parties. It is true in *Haynes v. Haynes* (1 Drewry & Smale, 426), a mere notice to treat followed by the death of the landowner without either contract or the exercise of the compulsory powers of the Act was held insufficient to effect a conversion, but here there was an exercise of the compulsory powers of the Act. (See Haynes's *Outlines of Equity*, 4th ed., 417.)

---

### COPYHOLDS.

53. *A testator by his will settles his copyhold estate upon his eldest son A. for life, with remainder in fee to B., his second son, and gives the power of sale during A.'s lifetime to a trustee. A. was not admitted upon the testator's death. The trustee exercises his power of sale, and the purchaser requires that A. should be admitted. Can this be insisted upon? State the reason for your answer.*

If the lord has not exercised his right of seizing the lands *quousque*, after holding three consecutive customary courts for want of a tenant prior to the completion, the purchaser cannot require A. to be admitted, because the power given to the trustee to sell during A.'s lifetime is an executory interest in the copyholds, such as is very commonly inserted in wills where an immediate sale and only one admission to copyhold lands are desired. The purchaser takes as the nominee of the trustee, who having only such a power and no estate in the lands has no occasion to be admitted, and A. has no occasion to be admitted because the purchaser takes his title direct from the testator's will.

If the lord has seized *quousque*, then the purchaser could doubtless insist upon A.'s admission, because then the purchaser would technically derive his legal title through a surrender from A., as the trustee has nothing to surrender at law and his equitable interest is defeated by the lord's seizure. (Williams' *Real Property*, 11th ed., 372, 377).

## CUSTOM OF TRADE.

*54. In support of his defence a defendant seeks to set up and prove a certain custom or usage of trade. What are the chief essentials to make such custom good and binding in law ?*

If there be an invariable, certain, and general usage or custom of any particular trade or place, the law will imply on the part of one who contracts, or employs another to contract for him, upon a matter to which such usage or custom has reference, a promise for the benefit of the other party in conformity with such usage or custom ; provided, that is, there be no express stipulation between them which is inconsistent with such usage. To be binding, however, such usage must be uniform and universal ; but when such invariable usage is proved, it is to be considered as the basis of the contract between the parties ; and their respective rights and liabilities are held to be precisely the same as if, without any usage, they had entered into a special agreement to the like effect. But where the usage is one which merely applies to the mode of dealing of a particular house, a party cannot be bound thereby, unless he be shown to have had notice of it. (Chitty on Contracts, 10th ed., 57, 58).

---

DAMAGES.

*55. A. in June buys of B. 500 tons of iron, to be delivered in about equal proportions in the following months of September, October and November. The contract is in writing. In August of the same year B. gives A. notice that he does not intend to deliver any iron. In December A. brings an action against B. for non-delivery of the iron. What will be the proper measure of damages ?*

The measure of damages is the sum of the differences between the contract and market prices of the like quantity of iron as that which was to be delivered under the contract in September, October and November respectively. (*Brown v. Muller*, L. R. 7 Ex. 319 ;

*Roper v. Johnson*, L. R. 8 C. P. 167 ; Chitty on Contracts, 10th ed., 817.)

56. *A. contracts for the purchase of a quantity of rice to be delivered at Birmingham so soon as vessels can be obtained for the carriage thereof. During the transit of the rice the market falls, and the buyer gives notice to the seller that he will refuse acceptance. On arrival of the rice it is tendered to the buyer who refuses it, whereupon the seller brings his action against the buyer for non-acceptance. What will be the measure of damages to which the seller is entitled, and at what period should they be calculated ?*

The measure of damages will be the difference between the contract price and the market price on the day when the buyer had the rice tendered to him.

The seller should, within a reasonable time after the buyer's refusal to accept the rice when so tendered to him, re-sell the rice at the best price that can be obtained, and the proof of the price obtained for the rice at such re-sale will afford the best evidence of the market value. (See Chitty on Contracts, 10th ed., 817.)

57. *A. and B. commit a trespass in pursuit of one common design. In an action by C. against them for such trespass, in which he obtains a verdict, how are the damages assessed, jointly or severally, against the defendants, and why ? If C. levies the whole damages on one of the defendants, has such defendant any right of action against his co-defendant for a moiety of the damages ? Give reasons for your answer, and refer, if you can, to any leading case on the subject.*

The damages are assessed jointly, so that the plaintiff may at his option enforce his judgment against all or only one of the defendants by levying execution, and so the more readily obtain payment. If C. levies the whole damages on one of the defendants, such defendant has no legal right of action against his co-defendant for contribution of a moiety of the damages, because the damages are given in respect of a tort and not for breach of a contract. This is owing to an arbitrary rule of law that there is no contribution allowed between tortfeasors, as enunciated by the leading case of *Merryweather v. Nixan*, 2 Sm. L. C. 527 ; Haynes's Student's Leading Cases, 72.



## DISCONTINUANCE.

58. *What is a discontinuance, as applied to an estate? and what change in the law as to discontinuances has been effected by modern statutes?*

If a tenant in tail prior to 1833 conveyed to another a larger estate in his lands than he was by law enabled to convey, except under the doctrine of tortious operation, such conveyance operated as a discontinuance of the entail. The issue in tail and those entitled in remainder or reversion lost their right of entry, which upon the death of the tenant in tail would have otherwise accrued to them respectively. The reversioners and remaindermen had a remedy in a particular form of action called a *formedon*. So had the issue in tail, unless, in the case of a firm, it was levied with proclamations. The learning on this subject has now become obsolete, owing to 3 & 4 Will. IV. c. 27, providing (sect. 39) that no discontinuance shall thereafter avail to take away the right of entry, and to 3 & 4 Will. IV. c. 74, having abolished fines and recoveries, and lastly, owing to 8 & 9 Vict. c. 106, s. 4, providing "that a feoffment made after the 1st October, 1845, shall not have any tortious operation."

A similar conveyance by a tenant *for life* of a greater estate than the law entitled him to convey operated as a forfeiture to the person in immediate remainder or reversion, who was entitled to enter immediately. (1 Stephen's Com., 249 n, 461 n, 508 n.)

---

DISTRIBUTION (STATUTES OF).

59. *A man dies intestate, leaving the following relatives:—A widow, mother, uncle, brother of the half blood, nephew (child of deceased sister), two nieces (children of deceased brother), and grand-nephew (grandchild of another deceased brother). How will the personal estate of the intestate be distributed under the statute?*

The widow will take one moiety, and the other moiety will be

divided into five parts, and one part will go to the mother, uncle, brother of the half blood, and nephew respectively, and the remaining part will be divisible between the two nieces in equal shares. The grand-nephew will take nothing, as there is no right of representation beyond the brother's and sister's children of a deceased intestate. (22 & 23 Car. II. c. 10, as amended by 1 Jac. II. c. 17, s. 7; 2 Prideaux, 11th ed., 442; Williams' Personal Property, 10th ed., 404.)

60. *Illustrate by example the difference, if any, between a limitation to "the next-of-kin," and "the next-of-kin according to the statute" of a deceased person. Would the widow of the deceased take an interest under either of the limitations?*

A gift to the next of kin of A. without more, creates a joint tenancy in the persons who are nearest of kin to A. in equal degree, without reference to the Statutes of Distribution; so that if A. leaves two brothers and a nephew (the child of a deceased brother), or a father and child, the two brothers, to the exclusion of the nephew in the one case and the father and child in the other case, would take the property as joint tenants. But if the gift is to the next of kin according to the Statutes of Distribution, the persons to take will be the relations of A., amongst whom the personal property of an intestate is made distributable by the statute, and such persons will take as tenants in common; but a widow or widower (not being of the kin of A.) cannot take under such a gift (2 Prideaux, 11th ed., 386), though, as is well known, the widow or widower would take, under the Statutes of Distribution, their respective interests.

---

### DONATIONES MORTIS CAUSA.

61. *A., being in expectation of death, handed to B. a desk containing the articles specified below, with an intention of making them the subject of a donatio mortis causa. He shortly afterwards died. How far did the gift take effect? State in detail the reasons for your answer, and the law on the subject.*

*Bonds, promissory notes and cheques, some payable to bearer and*

*some to A.'s order, Bank of England notes, country bank notes, bills of exchange, some indorsed in blank and some to the order of A., and a certificate of railway stock held by A.*

All the above-mentioned articles, except the cheques payable to bearer or order (as to which see *infra*) and the certificate of railway stock, being valid objects for *donationes mortis causæ*, and the conditions for the gift to take effect having been performed, the above-mentioned gift will take effect as to them. The three conditions necessary to complete a perfect *donatio mortis causæ* are:— (1) It must be in expectation of death; (2) on the condition that the gift is to be absolute only on the donor's death; (3) that the subject-matter be as far as possible delivered to the donee or his agent. The subject-matter of a *donatio mortis causæ* formerly only extended to moveable articles, but the Courts have since held that a valid *donatio mortis causæ* may be made of bonds, notes, bills, title deeds mortgaged to the donor, &c. A cheque, whether payable to bearer or order, cannot be made the subject of a valid *donatio mortis causæ* unless it is cashed or otherwise negotiated in the donor's lifetime. (*Snellgrove v. Bailey*, 3 Atk. 214; *Gardner v. Parker*, 3 Mad. 184; *Rolls v. Pearce*, 46 L. J. Ch. 791; L. R. 5 Ch. 730; *Re Mead*, 50 L. J. Ch. 30.) There cannot be a valid *donatio mortis causæ* of railway stock. (*Moore v. Moore*, L. R. 18 Eq. 474. And see fully on this subject H. A. Smith's Equity, 527—532.

---

## DOWER.

62. *What is the distinction between "dower" and "freebench," and in what important particulars did they differ prior to 1834?*

Dower is the right which the wife (not being an alien, unless she be naturalised or made a denizen) has in the third part of the lands and tenements of which her husband dies solely possessed of or entitled to at law or in equity, in fee simple, fee tail general, or as heir in special tail, which, unless her dower has been barred, she

holds from and after his decease in severalty by metes and bounds for her life, whether she have issue by her husband or not, and of what age soever she may be at her husband's decease, provided she be past the age of nine years. Before dower can attach there must be (1) a legal marriage for *ubi nullum matrimonium ibi nulla dos*; (2) that marriage must not have been dissolved (*Frampton v. Stephens*, 51 L. J. R. Ch. 562); and (3) the husband must be dead.

Freebench is a similar right with respect to copyholds to that which dower is as regards freeholds, except that freebench is only claimable by the special custom of the manor within which the property is situate, and therefore the estate which the widow is to take, both as to its quantity, quality and duration, must be such as the custom prescribes. It is generally a third for her life, like dower at common law, but it is sometimes a fourth part only, and sometimes but a portion of the rent. In many manors the wife takes the whole for her life, in others she takes the inheritance. Frequently the customary right is *durante viduitate*, and in some cases it is confined to her chaste widowhood. Again, it differs from dower in that freebench, unless by particular custom, does not attach even in right till the actual decease of the husband; whereas the right to dower at the common law attaches immediately on marriage, and at common law the widow was entitled to dower in lands of which the husband was seised *at any time during the coverture*. Consequently dower at common law was unaffected by the husband's alienations, whilst freebench, except by particular custom, attaches subject to the husband's alienations. These were the distinctions and differences *prior* to 1834, when the Dower Act of 1833 (3 & 4 Will. IV. c. 105) came into operation.

As to the differences since the Dower Act, freebench is not affected by it, as the Dower Act only applies to freeholds.

As to freeholds, it has made considerable alterations. They are principally as follows:—

(1.) It extends dower to equitable or beneficial estates in land as well as the legal.

(2.) It extends the right to dower to lands in respect of which the husband had a right of entry, as well as the lands of which he was seised.

(3.) The widow's dower, though still as before one third part of

the nett yearly value for her life, is now subject not only to her husband's conveyances, contracts, charges and devises, but also to any declaration to bar the same made by a deed to which he is a party, or by his will. (Wharton's Law Lexicon, 6th ed., 316 and 408, under "Dower and Freebench.")

63. *A wife married before the Dower Act joins with her husband, for the purpose of releasing her dower, in mortgaging his freehold land, and the equity of redemption is reserved to her husband. On his death the mortgage is repaid, and the widow claims her dower. Can such claim be supported at law or in equity? State the grounds of your answer.*

No, because this is a case which is entirely governed by the old law. The old law was that dower only attached to the legal estate and not to the equitable estate for any purpose. When the wife mortgaged the freehold land she voluntarily concurred in her husband's act when he gave up the legal estate *with all its incidents*, knowing (as she is presumed to know) that by so doing her husband had only after the mortgage an equitable estate in the freehold land, and to that dower did not attach. (See *Dawson v. The Bank of Whitehaven*, 46 L. J. R. Ch. 884.)

If the wife had been married since the Dower Act the wife could have claimed dower. (See *Meek v. Chamberlain and Wife*, 51 L. J. Q. B. 99.)

---

### ELECTION.

64. *Explain and illustrate the doctrine of election, and state how far the following proposition respecting testamentary gifts is law:— "Quod autem diximus alienam rem posse legari, ita intelligendum est, si defunctus sciebat alienam esse, non si ignorabat. Forsitan enim si scivisset alienam rem esse, non legasset."*

Election is the choosing between two rights by a person who derives one of them under an instrument in which a clear intention

appears expressly or by implication that he should not enjoy both. (Smith's Man. Eq., 12th ed., 405.) Two essentials are necessary in every case before an election can arise: (1) that property which belongs to one person (A.) must be given to another person by the testator; and (2) that the testator at the same time gives to A. property of his (the testator's) own. (Snell's Equity, 5th ed., 220.) The person (A.) put to the election must either confirm the whole will so far as he is able and convey away his own property and receive the property of the testator in lieu thereof, or he must elect to keep his own property and to take whatever property there may be left for him, after compensating the person injured by his election, out of the property left by the testator to A. if he carried out his intentions. Election may arise under any instrument, be it marriage articles, marriage settlement, will, or any other valid instrument (see *Streatfield v. Streatfield*, 1 Wh. & Tud. L. C. Eq. 369; Haynes's Student's L. C. 178); and may arise under an intestacy, for the Statute of Distributions is in substance nothing more than a will made by the legislature for the intestate. (See *Cooper v. Cooper*, L. R. (H. L.) 7 English and Irish App. Cas. 53; 44 L. J. Ch. 6.) These cases illustrate the doctrine.

The Latin passage (*supra*) is quoted from the second book of the Institutes of Justinian, 5th section, and shows what the Roman law was on the subject. By that law the gift of another's property was only valid if it was made advisedly, but not if it was made under an erroneous supposition that the subject-matter belonged to the testator. (See F. O. Haynes's Outlines of Equity, 4th ed., 325, where the above passage is also quoted, and the above doctrine is clearly explained.)

The English law holds a gift of another's property a valid gift, whether it was made either advisedly or in error by the testator. The above doctrine only applies to gifts by will. Election under the operation of the doctrine of satisfaction is distinct from this equitable doctrine. (See H. A. Smith's Equity, Chap. IX., sect. 1.)

For further information and explanation upon this interesting though technical doctrine, see a tractate upon it by Mr. J. C. H. Flood.

65. *When a case of election is raised, what are the rights of the party compelled to elect? How is the doctrine applied in the*

*various cases of persons under disability? Mention any recent legislation bearing on its application to married women.*

He or she is entitled before electing to be informed of his or her rights to elect, and the consequences of his or her determining to elect one way or the other, and for that purpose, if necessary, to commence an action in the High Court of Justice (Chancery Division) to have an account taken of the value of each of the respective properties as to which he or she is called upon to choose between. Every person is not presumed to know this doctrine, for the maxim "*Ignorantia legis non excusat*" does not embrace this doctrine.

When the person compelled to elect has thus been put in a position to deliberately elect, he or she must elect to take under or against the instrument creating the power of election. If he or she elects to confirm the instrument, then the intention of its author must be carried out by conveying his or her own property to the person indicated therein, in return for receiving some of the property of the author of the instrument. If he or she, on the other hand, does not elect to confirm the instrument by carrying out its author's intention, then he or she does not wholly forfeit all the property given to him or her by that instrument, but only so much as will compensate in point of value the person indicated therein for the loss he would but for this doctrine sustain by the acts of the electing party.

The doctrine is applied in the various cases of persons under disability as follows :—

As regards married women, the practice formerly varied (see notes to *Gretton v. Haward*, 1 Swanst. 413); but now it is settled that a married woman can elect like a *feme sole*, except in the following cases :—(1) Where she is *non compos mentis*, when the Court only can elect for her; (2) where after marriage a fortune is settled upon her in lieu of dower (*Frank v. Frank*, 3 My. & C. 171); and (3) where property is settled to her separate use without power of anticipation (*Robinson v. Wheelwright*, 21 Beav. 214; 6 D. G. M. & G. 535. See also 45 & 46 Vict. c. 75, as regards a married woman's present position in law with reference to her property. See also *Wilder v. Pigott*, 52 L. J. Ch. 141, following *Barrow v. Barrow*, 4 K. & J. 409, and *Smith v. Lucas*, L. R. 18

Ch. D. 531. Also see 3 & 4 Will. IV. c. 74, s. 77, and 20 & 21 Vict. c. 57.) By virtue of sect. 39 of the Conveyancing and Law of Property Act, 1881, the Court has power on a summary application by summons to bind a married woman's interest in property settled to her separate use, without power of anticipation, provided (1) the Court thinks fit, and (2) it appears to the Court to be for her benefit, and (3) it be made with her consent. This section does not give power to the Court to remove the restraint on anticipation. (See *Hodges v. Hodges*, 51 L. J. Ch. 549; *Tamplin v. Miller*, 17 L. J. Ch. 40; and *Re Busby*, 17 L. J. N. C. 106.)

As regards infants, the practice of the Courts is to elect for them, unless no one will be prejudiced by the matter standing over until the infant has attained his or her majority, when the Court will defer the question until then. (See *Streatfield v. Streatfield*, Cas. Temp. Talbot, 176; 1 Wh. & Tud. L. C. Eq. 369; Haynes's Student's Leading Cases, 178.)

As regards lunatics, the High Court in all cases elects for them. (See *Wilder v. Pigott*, 52 L. J. Ch. 141. See F. O. Haynes's Outlines of Equity, 4th ed., 345.)

---

## ESTATES TAIL.

66. *What is meant by a "protector of a settlement," and what purpose does he serve? In the case of a settlement "to the use of trustees, in trust for A. for life, with remainder to the use of his children as tenants in common in tail, with remainders over," A. obtains the conveyance of the legal estate from the trustees; who is the protector of the settlement, and who would be the necessary parties to bar the entails?*

A protector of a settlement is a person whose consent is required before a tenant in tail in remainder can bar the entail in such a manner as to defeat the remaindermen and reversioners; or, in other words, is a person whose consent is required before a tenant in tail in remainder can create a larger estate than a base fee by a disentailing assurance. A protector is generally the first beneficial



tenant for life, whose estate is created by the same instrument as the tenancy in tail is ; but instead of this, not more than three persons may be specially appointed by the settlor or testator, by the settlement or will creating the estate tail, to be together the protector. (2 *Prideaux*, 565 ; 3 & 4 Will. IV. c. 74, s. 22.)

In the above case, A. (being the beneficial though not legal owner of the first life estate) will be the protector, and he, together with all his children, who being tenants in common take each a vested share or part of the whole estate, will be the necessary parties to bar the entail. (*Re Dudson's Contract*, 47 L. J. Ch. 632 ; L. R. 8 Ch. D. 632.)

67. *What was the rule of law laid down in " Wild's case," and how far has such rule been held to be applicable to personalty ?*

The rule in *Wild's case* is that where there is a devise to a person and his children or issue, and he has no issue at the time of the devise, there such person will take an estate tail ; but if a man devises land to a person and his children or issue, and he *then* has issue of his body, there the express intent may take effect, according to the rule of the common law, if no manifest intent appears in the will to the contrary, and therefore in such case they (the parent and his children) shall have but a joint estate for life.

It was further resolved in the above case that if a testator devised land to husband and wife, and after their decease to their children, or the remainder to their children ; in this case, although they have not any child at the time, yet every child which they shall have thereafter may take, by way of remainder, according to the rule of law.

The rule in *Wild's case*, so far as it tends to cut down the interest of the parent to a life estate, is applicable to personalty ; so far as it tends to enlarge the interest of the parent to an estate tail, it is not so applicable. (Tud. L. C. Conv. 581, 592 ; *Mozley and Whiteley's Law Dict.* 491 ; *Haynes's Student's Leading Cases*, 192.)

## EXECUTORS AND ADMINISTRATORS.

68. *A trader by his will empowers his executors to carry on his business for the benefit of his infant children. Upon his death the executors accordingly continue the business. What are the rights and liabilities of the executors in respect of profit arising from and losses incurred in such trading?*

The executors have a discretion in such a case to carry on or sell the business. If they consider that to carry on the business it would really benefit the infants, they should do so. The executors having determined to carry on the business will have to account for all profits received by them whilst doing so, and will not, in the absence of a special direction being contained in the will, be entitled to retain any sum so received by them for their own use, except to the value of any moneys paid out of their own pocket. (*Robinson v. Pett*, Haynes's Student's Leading Cases, 312.) As to the loss, the executors ostensibly carrying on the business will be liable to the debts they may thereby incur as fully as if they were carrying on the trade for their own benefit. (Williams on Personal Property, 11th ed., 367, 368.) If the will provides a fixed fund for the carrying on of the business, as is usually the case, although the executors are personally liable, as just stated, for the debts, they have a right to resort for indemnity to the fund so provided, but to no other part of the estate, and the creditors are entitled to stand in the place of the executors, and to have the benefit of their rights so as to obtain payment of their debts. This rule does not apply where a sole executor is indebted to the estate, as then he has no claim for indemnity until he has made good his default, and then the creditors are in no better position. (*Re Johnson*, *Shearman v. Robinson*, 49 L. J. Ch. 745; L. R. 12 Ch. D. 548.)

69. *A. is indebted to B. for money lent, and is also indebted to the firm of which B. is a partner for goods supplied; A. dies, having made a will, of which he has appointed B. executor. His estate is found to be insolvent. Has B. any and what advantage over the general creditors in respect to the debt due to himself and his firm, or either of them?*

B., by virtue of his appointment as executor, has one advantage from his office, and that is, he can retain out of any assets received by him as executor such debts as are due to him or to any firm of which he is a member out of the legal assets and as against all creditors in equal degree, provided such other creditors have not, by having obtained a personal judgment against the executor, secured to themselves a priority in the payment of their claims. (See 2 Williams on Executors, 6th ed., 971; *Lee v. Nuttall*, L. R. 12 Ch. D. 61; *Re Morris*, L. R. 10 Ch. App. 68.) This right is unaffected by the Judicature Act, 1875, sect. 10. (*Richmond v. White*, 48 L. J. R. Ch. 798; L. R. 12 Ch. D. 321.)

### EXECUTORY BEQUESTS.

70. *What is the effect of a bequest of leaseholds for years to A. for life, and after his decease to B. and the heirs of his body, and in case of the death of B. without issue, to C.? Also of a bequest of similar property to A. for life, and after his decease to his eldest son (not then born) and the heirs of his body, and in default of such issue to C., supposing (1) that A. subsequently had a son, (2) that A. never had a son?*

In the first case, A. takes an estate for life, or rather is entitled to keep the leaseholds during his lifetime, and the residue of the term then existing will devolve upon B. absolutely, for words which would confer an estate tail in real estate give an absolute interest in personal estate. C. will take nothing in that case, because no second absolute limitation of personalty can be of any effect. Such a limitation of realty can only be effectual when it is valid as an executory interest.

In the second case, A. takes also an estate for life, or rather is entitled to keep the leaseholds during his lifetime, and on his death the existing residue therein will in event (1) devolve upon A.'s son, for the reasons and upon the same grounds as stated above in the first case, and will in event (2) devolve upon C. absolutely; for

in the first case C. could not take anything, because there his was an absolute interest limited to him *after* another absolute interest made in favour of an existing person (*i.e.* B.) in the same *personal* property; in the latter case, if A. never had a son there is, it is true, an absolute interest limited before C.'s interest, but in favour of a *non-existing* person, which is ineffectual. (See *Leventhorpe v. Ashbie*, Tud. L. C. Conv. 763; Haynes's Student's L. C. 193.)

---

### FAMILY COMPROMISES.

71. *On the death of A., intestate, B. his first cousin and C. his second cousin agree in writing (before his next of kin are ascertained) that they will share equally what may come to them from A.'s estate. Apply to this case the rules which govern the Court in supporting or setting aside family arrangements.*

The law clearly gives all the personalty to B., if there are no other relations of A. than B. and C., and C. during B.'s lifetime has no legal right to any part of A.'s estate. However, the Court would support such an agreement, unless C. had induced B. to execute it under a misrepresentation wilfully made, or by an artifice or fraud, on the ground that it is a fair compromise entered into by B. and C. to preserve harmony and affection between them, being members of the same family, and to prevent doubts and disputes which might otherwise arise, for, as a fact, they did not know that either would come into anything at the time the agreement was entered into. The Court will, sometimes, support family compromises, though they rest on grounds which would not have been considered satisfactory if the transaction had occurred between mere strangers. There must, however, be a full disclosure by each and all of them of all the material circumstances known to each and all of them. The intention of the parties and the circumstances of each case naturally influence the Court. To uphold them, there must be no taint of fraud, and no mistake as technically understood. (*H. A. Smith's Equity*, 182; *Stapilton v. Stapilton*, 2 Wh. & Tud. L. C. Eq. 836; *Gordon v. Gordon*, 3 Swanston's Rep. 400; Haynes's Student's L. C. 197.)

## FRAUD.

72. *Can an infant or married woman be made responsible for fraud, misrepresentation, or concealment; and, if so, under what circumstances, and upon what principles? Does mere silence ever amount to fraud?*

An infant or married woman can be made responsible for their fraud, fraudulent misrepresentation, or fraudulent concealment, notwithstanding their infancy or coverture respectively, on the principle that no person can take advantage of his own wrongful act or omission, though in practice it is impossible to do so directly. They can be, and are, made responsible indirectly by the Court preventing them from recovering or deriving any benefit from their own fraud, &c., and in the case of a married woman the Court can, though there are no reported cases directly in point, be compelled out of her separate estate (if any) to make compensation for any injury done to other persons through her fraud, &c., and such a woman might before the Married Women's Property Act, 1882, have lost any equity to a settlement which she might otherwise have had but for her fraud; as, for instance, fraudulently concealing her marriage to an intending purchaser of property subject to such equity. (See *Savage v. Foster*, 2 Wh. & Tud. L. C. Eq. 620; Haynes's Student's Leading Cases, 199.)

In certain circumstances silence may be as fraudulent and fatal as falsehood.

The matter concealed, to amount to a fraud, must, however, be—

- (1.) A material fact;
- (2.) The concealment of which was instrumental in bringing about the injurious act complained of by the other party; and
- (3.) The fact concealed must be one which the party concealing it was under some legal or equitable obligation to disclose to the other party. (See H. A. Smith's Equity, 142.)

73. *A. brings an action of deceit in the Chancery Division, alleging that he has been induced by fraud to purchase shares in a company. What must he prove to succeed? Will it suffice if he*

*proves facts which would entitle him to succeed in an action to rescind the purchase, on the ground that the rules of equity ought to prevail?*

“An action of deceit” (says Cotton, L.J., in *Arkwright v. Newbold*, 50 L. J. Ch. 376) “must be decided on the same principles whether brought in the Chancery or any other division. There is, in my opinion, no equitable action for deceit. It is a common law action, to be decided, wherever brought, on common law principles. In such an action it is necessary to prove that a statement has been made which, to the knowledge of the person making it, was false, or which was made by a person with such recklessness as to make him liable, just as if he knew it to be false, and that the plaintiff acted to his prejudice or damage on the statement made.”

A. must therefore prove, to succeed: (1) the falsity of the prospectus in a material respect; (2) that he was misled thereby; and (3) has sustained damage thereby. However true it may have been formerly that in a Court of Equity a plaintiff could more easily succeed, or could succeed with lighter evidence of the defendant's guilt, it does not apply now, for by the Judicature Act, 1873, every branch of the High Court is made a Court of Law as well as a Court of Equity.

It will not suffice if he proves facts which would entitle him to succeed in an action on an equitable ground,—as, for instance, that his signature was obtained under duress, or when suffering under a delusion which was taken advantage of by the other party, or when a fiduciary relation existed between the parties, and all independent advice was excluded,—for as James, L.J., in *Arkwright v. Newbold*, *supra*, points out, such cases stand by themselves, and are entirely distinct from a case of common law deceit. (See also the recent important decisions in *Redgrave v. Hurd*, 51 L. J. Ch. 113, and *Smith v. Chadwick*, 51 L. J. Ch. 597.)

## GUARANTEES.

74. *In order to determine what is a promise to answer for the debt or default of another within the 4th section of the Statute of Frauds there are five defined rules of law to be observed. What are they?*

(1.) In the first place, it has been decided that the sort of promise which the statute means, and which must be reduced into writing, is a promise to answer for the debt, default, or miscarriage of another person for which that other person himself continues liable. (*Birkmyr v. Darnell*, Salk. 27.)

(2.) In the second place, the promise which is to be reduced into writing is a promise made to the person to whom the original debtor is liable; but a promise made to the debtor himself, or even to a third person, to answer is not within the 4th section, and does not require to be reduced into writing. (*Eastwood v. Kenyon*, 11 A. & E. 438.)

(3.) The consideration which supports the promise need not in this particular case be in writing, though one must of course exist, and must be proved at the trial should the matter be carried so far. The promise need only be in writing. (19 & 20 Vict. c. 97, s. 3; Haynes's Student's Stat., 2nd ed., 153.)

(4.) It has also been decided that if one makes a promise to answer for the debt of another, for which that other never becomes legally indebted to the promisee, that would be within the section if at the time the promise was made the promisor and promisee expected that a legal obligation would be incurred by a third person. (*Mountstephen v. Lakeman*, L. R. 5 Q. B. 613; 39 L. J. Q. B. 275.)

The idea that a verbal promise even to answer for the debt of another, for which that other remained liable, might be available if founded on an entirely new consideration conferring a distinct benefit upon the party making such promise is confuted by Serjeant Williams, in his note to *Forth v. Stanton*, 1 Wms. Saund. 211. The rule there laid down, which has ever since been approved of, is that the only test and criterion by which to determine whether the promise needs to be in writing is the question whether it is or is

not a promise to answer for a debt, default, or miscarriage of another for which that other continues liable.

It has also been considered that, in order to make the statute applicable, the immediate object for requiring the defendant's liability must be that he shall pay the debt of another if that other does not; and consequently it does not apply to the appointment of an agent to sell on a *del credere* commission.

(5.) The default or miscarriage of another person to which the statute applies need not, however, be a default in payment of a debt or in performing a contract. (*Kirkham v. Martyr*, 2 B. & A. 613; J. W. Smith's Law of Contracts, by V. T. Thompson, 7th ed., 100—113.) Owing to an attempt having been made to evade this section, and to render the law on the subject more certain, sect. 6 of 9 Geo. IV. c. 14, was passed. It enacts as follows:—

6. No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade, or dealings of any other person, to the intent or purpose that such other person may obtain credit [there]upon, unless such representation or assurance be made in writing, signed by the party to be charged therewith. (Haynes's Student's Statutes, 2nd ed. 95.)

---

## GUARDIAN AND WARD.

75. *Under what circumstances can infants appoint their own guardians? What are such guardians called, how are they appointed, and what powers are given to them by law?*

In the absence only of a guardian, the infant may, after fourteen, choose one for himself. The election is usually made before a judge in Court, but this is not necessary. The infant's election of course does not supersede the power of the Court to appoint another if it be deemed advantageous to do so. The advisable course is always to apply to the Court to appoint a guardian (see Wharton's Law Lexicon, 6th ed., 428); but it must not be forgotten that the



infant is thereby constituted a ward of Court, with all its attendant advantages, inconvenience, and expense. (*De Pereda v. De Mancha*, 51 L. J. Ch. 204.) The powers of such guardians will be the same as other guardians of infants, viz.:—To take the custody and tuition of the infant till the age of twenty-one; to bring an action of trespass against any who takes away or detains the infant, and recover damages for the use of the infant; to take into their custody the infant's real and personal property till the age of twenty-one, and then to account to the once infant for the same, without deducting anything for their time and trouble. The office is not assignable, but is determined by death. If the guardian, being an unmarried woman, marry, the office is not transferred to her husband, but she herself continues to act. (Wharton's Law Lexicon, 6th ed., 427.)

---

### HUSBAND AND WIFE.

76. *What powers of disposition, by deed or will, has a married woman over real estate settled to her separate use, and real estate not so settled, respectively? Apply the law to the following case:—Devise of real estate to wife absolutely; testator dies, leaving wife and son; the widow marries again, and she and her second husband mortgage the property by deed acknowledged; she afterwards makes a will devising the real estate to her second husband. Who at her death is entitled to the real estate? Would the result have been the same if the real estate had been devised by the first husband to her separate use?*

In cases not within the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75) (a), if the real estate is settled upon a married woman for her separate use, she can dispose of the equitable and beneficial interest therein by deed or will, and bind it by her debts created upon the faith of it and by her contracts respecting it as if she were a *feme sole* (*Taylor v. Meads*, 34 L. J. Ch. 203, Haynes's Student's Leading Cases, 207); but she cannot dispose of the bare

(a) See sections 2 and 5 of the Act.

legal estate, which is either vested in her husband as trustee for her by operation of law, or in a stranger in whom it may be vested by conveyance as her trustee. If her husband is her trustee, she and he can together by deed acknowledged dispose thereof under 3 & 4 Will IV. c. 74. If the real estate is not so settled to her separate use, she has no power whatever of disposing thereof except under an express authority given to her for that purpose, and except by deed acknowledged by her and with her husband's concurrence (3 & 4 Will IV. c. 74), unless such concurrence is dispensed with by an order of the High Court (Queen's Bench Division), under sect. 91 of the same Act.

In the case cited in the question, on the death of the wife the real estate, meaning here thereby freehold estates of inheritance, will devolve upon her son as her heir-at-law, unaffected by her will made during her second coverture, which is a nullity, but subject to the mortgage, which being acknowledged binds both the wife and her heir.

For the reasons explained above, the result would not be the same if the real estate had been devised to the wife for her separate use by her first husband, for then she could dispose of the equitable and beneficial interest by her will, which would be effectual to pass the real estate on her death to her second husband, subject of course to the mortgage.

*77. A life interest in the income of property is given in trust for an unmarried woman for her separate use without power of anticipation. She afterwards marries; her husband dies; she marries a second time, not having alienated. What, according to the decisions of the Court of Equity, is her power of alienation (a) before her marriage; (b) during her first marriage; (c) during her widowhood; (d) during her second marriage?*

(a) Before her marriage she can deal with the income as she pleases, because neither the separate use nor the restraint on anticipation has then any effect.

(b) During her first marriage she cannot deal with the income until after it has become due, as then the separate use and restraint on anticipation attaches to it.

(c) During her widowhood she can deal with the income as she

pleases, because neither the separate use nor the restraint on anticipation has then any effect.

(d) During her second marriage she cannot deal with the income until after it becomes due, as then the separate estate and restraint on anticipation again attaches to it if she has not alienated it during her widowhood, unless the separate use and restraint on anticipation is limited to her first marriage only, which does not appear to be the case here. (See *Tullet v. Armstrong*, 1 Beav. 1; Haynes's Student's Leading Cases, 208.)

78. *If a married woman having separate estate enter into an engagement to pay a debt, for example, join with her husband in a bond, is her separate estate bound, and if so, on what principle?*

Yes; as she thereby binds her separate estate which she is then possessed of, which she is not precluded from anticipating by alienation or otherwise, on the ground that she must have intended to have bound something by joining in the bond, and no other property can be bound by her by that act; and the Court construes the bond so as to give it force as far as possible and not to render it a nonentity as far as she is concerned. She could not thereby mean to execute any power given to her over any property, because to bind property under a power by any instrument she must either have referred to the power in express terms or to the property the subject of the power, neither of which has been done in this case. Again, she could not have meant to have bound her lands or reversionary personal property, for this she could not do—in cases not within the Married Women's Property Act, 1882—without a deed acknowledged under 3 & 4 Will. IV. c. 74, and 20 & 21 Vict. c. 57, and this has not been done. (*Hulme v. Tenant*, 1 Wh. & Tud. L. C. Eq. 521; Haynes's Student's L. C. 204)

The above reasons will still hold good in the case of contracts made by a married woman prior to 1st January, 1883; but as to contracts made on and after that date the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75, s. 1, sub-s. 3), provides that "every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property unless the contrary be shown."

Therefore, after the 31st December, 1882, every contract made by a married woman will be binding on her separate estate, unless *she* shows the contrary by the express terms of the contract or by implication from the circumstances, as, for instance, if it is shown that the subject-matter of the contract consisted of necessaries supplied to the household upon her order as implied agent for her husband in her capacity as housekeeper, and that she never led the plaintiff to understand that she intended to depart from the usual course of acting as her husband's agent.

*79. A married woman entitled to separate property concurs with her husband in a mortgage of such property, the husband covenanting for payment of the debt. Has the wife any rights against the husband's estate upon his death, and how far would the result depend upon the actual application of the money borrowed?*

In this case all depends upon the application of the money advanced. If the wife's separate estate is mortgaged to raise a sum of money to pay off her ante-nuptial debts, or debts contracted by her since her marriage solely upon the faith of her separate estate, or to buy a freehold house which the husband settles upon her for her separate use, in all such cases the mortgage being for the wife's sole benefit, and her husband merely joining therein because he has the bare estate therein, she has no rights whatever against the husband's estate upon his death; indeed, it would be absurd if it were otherwise, for she has still an equity of redemption, and the mortgagee has his power of sale and other remedies.

If, on the other hand, the separate property of the wife is mortgaged to raise a sum of money to pay her husband's debts, or to enable him to embark in a new speculation or business, then, unless a clear intention is shown to the contrary, on the husband's death the wife is treated—as in truth she is—as her husband's surety, and allowed to prove on his estate to the extent of the sum raised by the mortgage. Such contrary intention is not shown by the proviso for redemption being limited to the husband alone; but it will be shown by such proviso giving her an absolute power of appointment, and subject thereto to the husband absolutely, for then the parties will be deemed to intend that the beneficial in-

terest in the equity of redemption shall belong to the husband if the wife has not disposed of the property under her power.

A mortgage of the wife's separate property, if it consists of land, must—in cases not within the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75)—be acknowledged by her under 3 & 4 Will. IV. c. 74, to vest the legal estate in the mortgagee. (See 1 *Prideaux*, 11th ed., 443, and cases there cited, and notes to *Hulme v. Tenant*, 1 Wh. & Tud. L. C. Eq. 521.)

80. *What extension of the doctrine of separate estate was introduced by the case of Tullet v. Armstrong? Is a woman's property settled to her separate use for life, with restraint on anticipation, bound by her participation in a fraud respecting such property whilst she is under coverture?*

The leading case of *Tullet v. Armstrong* established what is still the law, viz., that the separate use and the restraint on anticipation must, in regard to their operation in the event of a subsequent or second coverture, stand or fall together, and that where either the unmarried woman before marriage, or the widow before a second marriage, omitted to exercise her power of alienation, there, either the separate use or the separate use with its accompanying restraint, would, if apt words were used, revive, so to speak, upon the marriage or second marriage, as the case might be. (Haynes's Student's Leading Cases, 208.) The married woman must not, however, when discoverd destroy the separate estate trust attached to her property, or the nature of such property, by turning it into another kind of property, for it is clearly laid down that if she does this she thereby makes such property part of her ordinary estate. (See *Newlands v. Paynter*, 4 My. & Cr. 408; and *Buttanshaw v. Martin*, Johns. 89; Snell's Equity, 5th ed., 363.) Now, however, all the property of a married woman will remain vested in her during coverture as a *feme sole* by virtue of the Married Women's Property Act, 1882; but it is apprehended that a married woman will still have it in her power to destroy the effect of a restraint on anticipation attached to her property, which was given to her for her separate use, accompanied with a restraint against anticipation, by deed, will, or contract during her first coverture, upon her becoming single again; and therefore if she converts her property then, it will

cease to be bound by the restraint during her second marriage, and can be disposed of by her at her absolute discretion.

A married woman's property, which is settled upon her for her separate use without power of anticipation, is not bound by her participation in a fraud respecting such property whilst she is under coverture. See the recent case, *Stanley v. Stanley*, 47 L. J. Ch. 256 ; L. R. 7 Ch. D. 589, where a married woman who had a life interest in certain property so settled purported by deed to assign her life interest to a mortgagee for value, and it was held that as it was a fraudulent transaction the mortgagee obtained no title thereby. The new Act of 1882 does not affect this decision.

81. *A married woman enters into general engagements with persons who act on the faith of her having separate estate, she being in fact entitled at the time to certain property for her separate use and to certain other property for her separate use with restraint on anticipation, and she subsequently becomes entitled to other property for her separate use. On her husband's death, her creditors proceed to enforce their claims. To what decree are they entitled?*

As to engagements entered into before 1st January, 1883, the Court, after being satisfied upon the evidence that the plaintiff entered into the same upon the faith of the married woman having separate estate which would be liable to satisfy his claim, and not with the married woman as her husband's agent express or implied, and after being satisfied upon the evidence that the married woman still has, at the time of pronouncing the decree, separate estate which she had at the date of her entering into the engagement, and which was then, and is now, unfettered by any restraint upon anticipation, will declare that property liable to satisfy the plaintiff's claim, and will give the married woman's trustees directions as to its realisation for the benefit of the plaintiff. To no other decree is the plaintiff entitled. (*Pike v. Fitzgibbon*, 50 L. J. Ch. 394 ; L. R. 17 Ch. D. 454.)

If the engagements were entered into on or after the 1st January, 1883, sect. 1 of the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), will apply, and in such case such engagements will, unless a contrary intention be shown, bind not only the present *but the future acquired property* of the married woman.

82. *Explain concisely the form in which equity grants relief in respect of the engagements of a married woman having separate estate, and state the principal provisions of an order made in any ordinary case. How far does the maxim that "Equity acts in personam" apply?*

Where an action is brought in which it is sought to bind the separate estate of a married woman, the plaintiff should in addition to joining her husband as a co-defendant, which must be done in every such case, although no relief is sought against the husband personally (*Hancocks v. Lablache*, L. R. 3 C. P. 197), join her trustees as co-defendants, so as to bind them by the judgment. At the hearing the plaintiff must prove that the married woman has at that time undisposed of separate estate which she is not restrained from anticipating, which she was also possessed of at the time the plaintiff's debt was contracted with her (a) in her separate capacity, and not as her husband's agent expressed or implied. Upon these facts being proved the Court will make an appropriate order binding the trustees to pay the plaintiff's debt out of her separate estate in their hands. If it is proved that the married woman had such property when the debt was contracted, but has since disposed of it, or settled it upon herself without power of anticipating it, the Court will reserve to the plaintiff power to take such proceedings to set aside her deed of disposition or settlement as he may be advised, on the ground that it was executed with intent to defraud the plaintiff of his debt. In the latter case the ordinary rules of law will apply as in the case of a deed executed by a man with the same intent. (*Pike v. Fitzgibbon*, L. R. 18 Ch. D. 454; 50 L. J. Ch. (App.) 394.)

If the plaintiff cannot prove more than that any such separate estate is liable to satisfy his claim, he will, upon proving that, be entitled to an order declaring such separate estate (if any) so liable, and have liberty to apply, as he may be advised subsequently on finding out such separate estate by her examination or otherwise, to bind it specifically. (*Barber v. Gregson*, 49 L. J. Exch. 731.)

The above maxim applies only in a limited degree in such a case, because the Court will not in the first instance make a personal order against a married woman. If, however, a married woman

(a) See, however, the latter part of the answer to Q. 81.

after being ordered to do anything refuses to do it, she will then be ordered personally to do the act complained of, and if she still refuses she will be dealt with under the jurisdiction of the Court, to punish for contempt of its authority.

The above question was asked before the Married Women's Property Act, 1882 (44 & 45 Vict. c. 75), came into operation, and is answered as the law then stood.

83. *A married woman, entitled to separate estate free from restraint on anticipation, and also to separate estate subject to restraint on anticipation, contracts debts. How far can payment of those debts be enforced as against such separate properties respectively, either at law or in equity?*

Owing to the provisions of the Judicature Act, 1873, there is now no difference between the remedy at law and in equity.

The property subject to the restraint on anticipation is not liable for any of the debts, even though contracted by fraud. (*Thomas v. Price*, 46 L. J. Ch. 761; *Stanley v. Stanley*, 47 L. J. Ch. 256; L. R. 7 Ch. D. 589.)

The property free from the restraint on anticipation is liable to be applied in the payment of all her debts to the full extent of its value. (*Pike v. Fitzgibbon*, 50 L. J. Ch. 394.)

The married woman can now be sued separately as a *feme sole*, and is liable in respect of all her property which she has acquired since the 31st December, 1882, which is not given to her for her separate use without power of anticipation, which latter property is still subject to the old rules laid down in *Tullet v. Armstrong* (a), 1 Beav. 1, except in regard to ante-nuptial debts. (See 45 & 46 Vict. c. 75, sects. 1 and 13.) For previous law, see *Barber v. Gregson*, 49 L. J. Q. B. 731; *Hancocks v. Lablache*, 47 L. J. C. P. 515; and *Cooper v. Macdonald*, 47 L. J. Ch. D. 373.

84. *A woman seized in fee of real estate marries a husband who is an infant. Can she by any and what means deal with her real estate during his minority? What is the Act governing the law on the subject?*

Yes, if she can on application by summons at chambers, or by motion in Court, obtain an order of the High Court (Queen's Bench

(a) Q. Q. 77 and 80, ante.



Division) dispensing with her infant husband's concurrence in the deed of conveyance duly acknowledged by her, on the ground of his incapacity to execute a valid deed of conveyance. (3 & 4 Will. IV. c. 74, s. 91.)

If she is seized in fee of real estate as a *bare trustee*, she can by acknowledged deed convey her interest without her husband's concurrence. (37 & 38 Vict. c. 78.)

If she is seized in fee of real estate which has been conveyed by deed or will to her for her separate use, with or without the intervention of trustees, or she has, prior to her marriage, by settlement or otherwise, limited the real estate to herself for her sole and separate use, with or without the intervention of trustees, then she can in either case convey by deed, unacknowledged and without her husband's concurrence, the equitable and beneficial interest therein (*Taylor v. Meads*, 34 L. J. Ch. 203, and cited in Haynes's Student's Leading Cases, 207); but a deed acknowledged and her husband's concurrence are required where the legal estate is not vested in trustees or any other person or persons than her husband.

N.B.—The foregoing answer must be taken to apply only where the woman was married before 1st January, 1883, and where the title to the property accrued to her before that date. (See 45 & 46 Vict. c. 75, s. 5.)

The above question has been also stated in the following terms:—

*A married woman, entitled in fee to real estate not settled to her separate use, is deserted by her husband. Can she by any and what means and under any and what circumstances sell or mortgage the estate without the concurrence of her husband?*

85. *A married woman dies entitled to a reversionary interest in personal estate. Her husband subsequently dies, without having reduced the reversionary interest into possession, and without having administered to his deceased wife. On the reversion falling in, who is entitled to receive it, and what steps are necessary with that object?*

The deceased husband's executor or administrator, upon his taking out administration to the deceased wife, in the same way as the

husband would have had to have done if he had survived his wife, and not died before he had reduced this chose in action of his wife into possession. (See *Re Harding*, 41 L. J. P. & M. 65; L. R. 2 P. & D. 394; Williams' Personal Property, 10th ed., 425, 426.)

86. *A. bequeaths £500 to B., a married woman, and appoints C. his executor. On A.'s death C., by agreement with B.'s husband, retains the money as a loan from him and pays him interest. On the death of the husband the £500 is claimed by his executors and also by B., his widow. State and apply the law relating to this case.*

The widow is entitled. The £500 bequeathed to B. is a chose in action which passes to B.'s husband *subject* to his reducing it into possession during his wife's lifetime; and the question here to be decided is, whether the agreement, coupled with the receipt of the interest thereon by the husband during his wife's lifetime, amounts to a reduction into possession by the husband. This it has been decided not to be. (H. A. Smith's Equity, 381.) The above question was asked in 1880. The law now being slightly different, the question would probably not be asked in the same form, because no such agreement would be likely to be entered into by C., if the legacy is left on or after 1st January, 1883, without the consent of the married woman whose separate property it would be. If, however, such an agreement were entered into, the married woman could alone then sue C. and use the agreement as proof that he held the money to her use.

87. *A married woman entitled for life to the income of a fund for her separate use (a) with a restraint on anticipation, (b) without such restraint, concurs with her trustees in a breach of trust whereby a portion of the capital of the fund is handed to and spent by her. What are her rights as against the trustees, and what are the rights of the remaindermen against her life interest?*

(a) She has a right, notwithstanding her acquiescence, against her trustees in this case, to have the portion of the fund so handed to and spent by her replaced by her trustees; but if she happens to have any other separate estate which has no restraint attached

thereto, they would be entitled to counterclaim to have themselves indemnified out of such other separate estate.

(b) She has no rights against her trustees, owing to her acquiescence in the breach of trust. The remaindermen, however, have a right to have the arrears of the income of this fund applied, so far as it can be, in making good the portion of the capital so handed to and spent by her out of her separate estate. If the arrears of income are insufficient, the remaindermen will have a remedy against the trustees, and any other separate estate of the married woman which is under no restraint against anticipation by alienation or otherwise. (H. A. Smith's Principles of Equity, 344.)

88. A., having married a lady whom he supposed to be in uncontrolled possession of a sum of £10,000, finds that she had executed a settlement thereof a few days before he became acquainted with her. Has he any, and, if so, what remedy?

No, he has none; as the principles of fraud upon marital rights do not apply except where the settlement was executed at the time A. was the settlor's intended husband, or, in common parlance, during their engagement to each other. (*Countess of Strathmore v. Bowes*, 1 Wh. & Tud. L. C. Eq. 446; Haynes's Student's Leading Cases, 209.)

N.B.—Women married on or after 1st January, 1883, can of course with impunity dispose of their property before marriage, and as secretly as they please, so far as the intended husband is concerned, as the Married Women's Property Act, 1882, prevents him from taking any interest in such property during the coverture, unless it be settled upon him, and, at the same time, gives to the wife the power of free disposition, subject to any restraint against anticipation.

89. A woman shortly before and pending the treaty for her marriage, and without the knowledge of her intended husband, who was not aware of the existence of her property, settles part of the property on herself and her children by a former marriage, and conveys other part to a purchaser for valuable consideration. Is the husband entitled to any and what relief? If he die without discovering the transaction, have his representatives any claim?

For the reason given in the answer to Q. 88, the above question is only relevant in the case of a marriage before 1st January, 1883. In such case the husband will not be entitled to any relief against the purchaser for valuable consideration without notice, and it seems even with notice. The husband, however, will be entitled to commence an action in the Chancery Division of the High Court to set aside the settlement by the wife on herself and her children as having been executed in fraud of his marital rights, unless he after the marriage is informed of it and acquiesces therein. If that settlement had been made *prior* to, and not during, the treaty for the second marriage, it would doubtless have been good. The ignorance of the existence of the property on the part of the husband is immaterial. If he had known of the settlement prior to the marriage, or had seduced his wife prior to the marriage, he could have obtained no relief. If he die without discovering the transaction, his representatives have no claim. (*Grazebrook v. Percival*, 14 Jur. 1103.) If the wife dies before the husband discovers the transaction, that will not affect her husband's title to relief. (*H. A. Smith's Equity*, 382; *Strathmore v. Bowes*, Haynes's Student's L. C. 209. And see note to Answer 88, *supra*.)

90. *Distinguish between a wife's right by survivorship and her equity to a settlement.*

*A Scotchman domiciled in England dies intestate, and letters of administration are taken out, and his personal estate is administered in the English Court. One of the next of kin is a sister, domiciled in Scotland, whose husband was bankrupt after the intestate's death, and died before suit. Assuming that by the Scotch law the trustee in bankruptcy is entitled to any interest taken by the husband, how will the sister's share devolve?*

The wife's right by survivorship is recognised by the Court in the exercise of both its legal and equitable jurisdiction, whilst the wife's equity to a settlement is only recognised by the Court in the exercise of its equitable jurisdiction. The former only affects the wife's choses in action and chattels real which the husband has not reduced into possession or disposed of, respectively; the latter affects all her personal property other than chattels real, and, so long as he is not maintaining her, all her equitable life interests in

realty. The property to which a widow becomes entitled by survivorship she could not by any act of herself alone, during the coverture, have waived her title to; whilst she can always by her own act alone, during the coverture, waive her equity to a settlement out of property to which she is entitled to claim a settlement at any time until the settlement is actually executed, either by her remaining passive, or, being active, afterwards neglecting to proceed with the enforcement of her equity.

In the case supposed above, subject to its being affected by the provisions of the Married Women's Property (Scotland) Act, 1881, the sister's share, being a chose in action, will devolve upon her by survivorship, as neither her husband nor his trustee appears to have reduced her share into possession during the husband's lifetime, for bankruptcy does not amount to a reduction into possession, and the trustee's title is no better than the bankrupt's. If the share becomes payable during the bankrupt's lifetime, his trustee will be entitled to receive it, unless the wife takes proceedings to enforce her equity to a settlement thereout, which she would probably do, as the Court would order the whole of the share to be settled upon her and her children, as the husband, by his bankruptcy, had rendered himself incapable of maintaining her. If the administrator refuses to pay the share to the trustee, and the wife does not initiate any such proceedings, the Court would order the whole share to be settled upon the wife, on the Court being applied to by the trustee for a compulsory order upon the administrator, unless the wife refused to have such a settlement made, which is not likely. If the administrator paid the share into Court under the Trustees' Relief Act, and the Court were asked by the trustee to order it to be paid to her, it would refuse, but would then also order it to be all settled upon the wife.

N.B.—The student may be here reminded that the doctrine of the wife's equity to a settlement will soon become obsolete, owing to the provisions of the Married Women's Property Act, 1882, by which *the whole* of her property is, subject to any settlement, settled upon the wife for her separate use. The doctrine will, however, doubtless continue to apply in the case of women married before 1st January, 1883, so far as regards property of the description above mentioned, the title to which accrued to them before that date.

91. *A. allows and pays his wife a yearly sum of money for dress, sufficient for her station in life, but upon condition that she is not to pledge his credit. Notwithstanding this, the wife obtains certain articles of dress from B., a draper, on credit. The prices are reasonable, and the articles necessities, in the sense that they are suitable to the wife's degree and condition in life. The agreement between her and her husband that she will not pledge his credit is unknown to B., the tradesman. Can B. maintain an action against A. for the price of the articles sold to the wife? State shortly the law upon the subject.*

No, he cannot; because her implied authority to pledge her husband's credit was expressly revoked by the condition imposed by her husband upon her, whilst he has performed his part of the agreement by paying the yearly sum. (*Debenham and another v. Mellon*, 50 L. J. Q. B. (H. L.) 155, following *Jolly v. Rees*, 15 Com. B. Rep. N. S. 628; 33 L. J. C. P. 177.)

The law on the subject is that where the husband and wife are living together the wife is authorised by him as his agent to bind him by contracting for necessities, such as food, clothes and furniture, according to the apparent circumstances of the husband and wife, *unless there is evidence to the contrary*; but that a wife who is living separately from her husband has no such authority, unless the separation was by her husband's unjustifiable compulsion, or occasioned by his misconduct, or by mutual consent, and she has no adequate provision for her support. In the latter cases the husband is responsible for necessities for her, even for necessary legal advice. (Smith's *Man. Com. Law*, 8th ed., 150.)

---

## INCORPOREAL HEREDITAMENTS.

92. *What is a "profit à prendre"; and what is the difference between a customary and a prescriptive right to a profit à prendre?*

A *profit à prendre* is a right to enter on the land of another and take therefrom a profit of the soil. (*Wharton's Law Lexicon*, 6th ed., 770.)

The origin of the term is to be found in the fact that he who is entitled to profits of this kind must himself enter upon the land and *take* them. There is no render of the profits to him by another as in the case of rent.

A *customary* right to such a profit savours of *locality*, as where the copyholders of some particular manor have an immemorially established right to cut turf on the common lands of that manor. A prescriptive right to a profit *à prendre* is, on the other hand, a *personal* right, and arises "where a man can show no other title to what he claims than that he and those under whom he claims have immemorially enjoyed it." It will be remembered that the law relating to titles by prescription is now governed by the Prescription Act (2 & 3 Will. IV. c. 71). (See Haynes's Student's Statutes, 2nd ed., 165.) It follows, therefore, that the word "immemorially" as used in this answer must be understood with reference to the periods of limitation laid down by the above Act.

---

## INHERITANCE.

93. *What was the effect of the Inheritance Act, 1833, upon a devise to the heirs of the devisor? How were pecuniary legatees affected by the change?*

The Inheritance Act, 1833 (3 & 4 Will. IV. c. 106, s. 3; Haynes's Student's Statutes, 2nd ed., 107) enacted that upon a devise to the heir of the devisor, such heir shall be considered to have acquired the land as devisee (*i.e.*, as purchaser), and not as heir by descent, as was the case prior to that Act. Pecuniary legatees were thereby benefited to a certain extent. Before that Act the land so devised was liable *before* the general pecuniary legacies in the administration of assets, as being in the third line in the order of liability. General pecuniary legacies are in the fifth line in the order of liability. Since that Act, the land so devised is made liable, but only *after* the general pecuniary legacies in the administration of assets, as being now in the sixth line in the order of liability. (Snell's Equity, 5th ed., 280.)

94. *A., by his will dated in 1830, devises certain freehold estates to the use of his nephew, B. (only son, by her first marriage, of A.'s only sister deceased, and A.'s heir-at-law), for life, with remainder to B.'s first and other sons successively in tail male, with remainder to the use of his nephew C. (eldest son by a second marriage of A.'s said sister), for life, with remainder to C.'s first and other sons successively in tail male, with remainders over in favour of two younger brothers of C. for life, and their issue in tail male, with an ultimate remainder in favour of the right heirs of A. Upon the death of A. in 1832, B. succeeds to the estates, but dies intestate and unmarried in the lifetime of C., leaving a sister of the whole blood his heiress at law. The younger brothers of C. also die without issue in the lifetime of C., who ultimately dies without male issue, having by his will devised all his real estate to his three daughters as tenants in common. Who, upon C.'s death, is entitled to the estates devised by A.'s will? Would the result have been the same if A. had died in 1834? Give the grounds of your answer.*

Two rules of law are involved in this question which are now exactly opposite to what prevailed as the law of the land as to the descent of freehold lands of persons who died prior to 1st January, 1834. The change was achieved by the Inheritance Act of 1833. (3 & 4 Will. IV. c. 106; Haynes's Student's Statutes, 2nd ed. 170.)

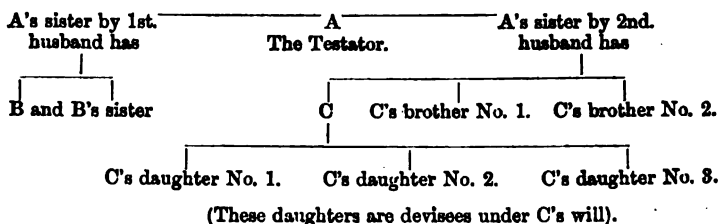
The rules involved are *now* as follows:—

1. If a testator shall devise land to a person who is his heir-at-law, such heir shall be considered to have acquired as a devisee (i.e. purchaser) and not by descent. For the former law the reader is referred to *Watk. on Descents* 174, 176 (4th ed. 229, 231), and *Williams' Real Property*, 11th ed. 216.

2. A kinsman of the half blood shall be capable of being heir; and that such kinsman shall inherit next after a kinsman in the same degree of the whole blood and after the issue of such kinsman when the common ancestor is a male and next after the common ancestor when such ancestor is a female. (*Williams' Real Property*, 11th ed. 109.)

Now the facts here may be more clearly understood by the following table:—





The only persons who survive and can possibly be A's heir-at-law are B's sister, who is B's heiress, on the one hand, and C's three daughters, who are C's devisees under his will.

The questions to be determined are who is A's heir-at-law under the old law and who under the present law? Under the old law the converse of Rule 1, *supra*, was binding. It is clear that B. was A's heir-at-law, but B. is now dead, and therefore, if he cannot take, then who is entitled, or, in other words, are we to find as entitled to the property, B's heir-at-law or A's heir-at-law? As above stated, under the old law, inasmuch as B. only would have taken by descent and not by purchase, we must find out who is A's heir-at-law. C. is clearly, on that basis, entitled if he is alive, and if he is dead his representative or representatives, before B's sister, because as regards A., B's sister and C. are equally entitled if they were males, and the rule as to half blood does not arise as it would if we were searching for B's heir-at-law, but C. is a male and has priority on that ground over B's sister, who is of course a female. C. being dead cannot take, but his daughters and devisees can and will take, if the old law is to govern, as tenants in common.

If the new law is to govern, then inasmuch as B. became entitled, owing to Rule 1, as purchaser, the question becomes, who, as he is dead, is entitled as his heir?

Then the question being between the same parties as before, owing to the operation of Rule 2, B's sister will now take in priority to C., because B's sister, though a woman, is of the whole blood as regards B., and C. is only a half-blood relation of B.

95. *A tenant of copyhold lands, acquired by purchase, dies intestate, leaving two daughters, who are duly admitted tenants on the Court Roll. One of them dies without having disposed of her interest, a widow, and intestate, leaving a son. The custom of the*

*manor follows the ordinary rules of descent. Who is entitled to admission on the decease of the daughter? Give the reasons for your answer.*

The moiety or half share of the deceased daughter will devolve wholly upon her son. This is arrived at independently of 3 & 4 Will. IV. c. 106. That statute was passed in order to lay down rules where any doubt existed, but otherwise left the law of inheritance absolutely plain. In the above case, it is not necessary to trace the heirship of the son from his grandfather, but only from his mother. (*Puterson v. Mills*, 19 L. J. Ch. 310; *Cooper v. France*, 19 L. J. Ch. 313.)

96. *What course of inheritance does the equitable interest in gavelkind lands ordinarily follow? A devise of gavelkind lands to trustees, upon trust for A. for life, and after his death upon trust to convey to the heirs of the body of B. Who will be entitled at A.'s death, and why?*

The equitable interest in gavelkind lands ordinarily follows the course of inheritance pointed out by the custom, on the ground that trusts and legal estates are to be governed by the same rules as to devolution (*Banks v. Sutton*, 2 Peere Wma. 713). But in the case put in the question the person or persons answering the description of the heir or heirs of the body of B. (whether B.'s eldest or only son, or the eldest son of a deceased eldest son, &c.) will be entitled to have the conveyance executed in his favour (*Robert v. Dinwoll*, 1 Atkins 607). For this is a case of an executory trust of gavelkind lands, and in such case the Court will direct the conveyance to be made according to the rules of the common law and not according to the custom. (*Ibid.*, 610).

[We are indebted for the above extract to the Editor of the *Law Examination Journal*, No. 53, p. 282, for we must confess our inability to find a better answer from the books we have at hand. The ground is that the intention of the testator must be observed in construing the will.]

97. *Explain the doctrine of "Possessio fratris." What object was served by it, and when and how was the doctrine rendered unnecessary?*

*Possessio fratris* was a seisin to turn the descent away from the brother of the half blood to the sister of the whole blood; thus if a father had two sons, A. and B., by different wives, these two brethren were not brethren of the whole blood, and, therefore, could not inherit to each other, but the estate rather escheated to the lord. Nay, even if the father died and his lands descended to his eldest son, A., who entered thereon and died seised without issue, still B. could not be heir to this estate because he was only of the half blood to A., the person last seised; but it descended to a sister (if any) of the whole blood to A., for in such cases the maxim was that the seisin or *possessio fratris* made the sister the heiress. Yet, had A. died without entry, then B. might have inherited, not as heir to A. his half brother, but as heir to their common father, who was the person last actually seised. (Wharton's Law Lexicon, 6th ed., 743; 1 Steph. Com., 7th ed., 421.) This doctrine was abolished in 1833 by virtue of 3 & 4 Will. IV., c. 106. In such a case now A. would inherit as heir to B., and on his death, either before or after the death of the common father, B. would inherit in preference to a sister of A. though of the whole blood. The reason for this difference arises from the fact of the half blood, who before 1833, were excluded, being now capable of inheriting. (Williams' Real Property, 11th ed., 109—110.)

---

#### LANDLORD AND TENANT.

98. *A tenant, in possession under a term of years, holds over after the expiration of his term, and the landlord subsequently accepts rent from him on the footing of the expired lease. Has such acceptance of rent any and what effect upon any claim which the landlord may have for breach of any of the covenants contained in such expired lease? Give the grounds of your answer.*

The general rule is that where there is an acceptance of rent subsequent to the breach of any covenant contained in the lease, such acceptance operates as an implied waiver by the landlord of his right of re-entry consequent on such breach, provided the breach is

not a continuous breach and provided the landlord had actual notice of such breach at the time of such acceptance.

If, as in the above case, the landlord and tenant go on paying and receiving rent as if the old lease had continued after its expiration, the legal effect is that a *new* tenancy from year to year is thereby created between them upon the same terms and conditions as those contained in the expired lease, so far as the same are applicable to, and not inconsistent with, a yearly tenancy. This, however, appears to be rather a matter of evidence than law. (Woodfall, 11th ed., 204.)

Now in the above case the landlord had only the right of entry consequent on the determination of his lease after its expiration, and a claim against the tenant for damages for breach of covenant contained in the expired lease. It seems to us, in the above case, in the absence of any direct authority on the point, that the landlord has not waived his right of entry consequent on the expiration of the lease further than is necessary to give effect to the new tenancy as above stated to be or have been created by them, and that his claim for damages is no more interfered with by such acceptance of rent under the new tenancy than it would be if the tenant under the expired lease and the yearly tenant were not the same but different persons. The tenancy created by the acceptance of rent after the expiration of the lease, is technically not a continuation of the old lease, but a new one altogether; although subject to certain of the old terms.

99. *What is the distinction between tenancies by sufferance, tenancies at will, and tenancies from year to year? How do they each arise, and how must each be determined?*

A tenancy by sufferance arises where a tenant has lawfully entered into possession of his landlord's lands or houses by a lawful title, but has remained in possession thereof after his title has determined. It cannot arise otherwise than by construction of law.

A tenancy at will arises where lands are let by one person to another by parol, by deed or construction of law, at the will of the lessor or person letting.

A tenancy from year to year arises where lands are let from year

to year, so long as neither party gives to the other party half (a) a year's notice, expiring at the end of any current year.

A tenancy at sufferance is determined by entry or demand of possession, or by commencing proceedings in ejectment, which latter may be done without any previous demand.

A tenancy at will may be determined at any time by the one party declaring by word, writing, or by some act of his (as by the landlord granting a lease for years to a third person of the premises) that he determines his will, and in the case of a tenant he must further carry out his will by also quitting possession. (See Williams' Real Property, 11th ed., 283; Wharton's Law Lexicon, 921, 1022, 1028; Haynes's Student's Leading Cases, 298.)

---

### LEASES.

100. *A., having a contract only for a lease for ninety-nine years, purported to demise the land to B. by way of mortgage for the whole term less three days. He subsequently acquired the lease, and demised the land to C. for the whole term less three days. What are the respective positions of B. and C.? Give the grounds of your answer.*

C. has the legal estate in the land for the term. B. has an equitable interest for the term. If C.'s demise was for value, as for instance by his entering into the covenants which lessees usually enter into with or without having paid a premium, and C. had no notice, actual or constructive (and note the recent restrictions on constructive notice by 45 & 46 Vict. c. 39, s. 3), of B.'s interest, the Court will not award any relief against C., though it will not assist him as plaintiff to turn B. out of possession should he have only just entered into possession, whilst C.'s back is turned, on the usual grounds governing such cases. If, however, as will probably be the case, C. had some notice, actual or constructive, of B.'s interest, B.'s title will, though only an equitable one, prevail over C.'s title. (See *Mumford v. Stolwasser*, 43 L. J. Ch. 694; L. R. 18 Eq. 556.) In that case the facts were:—A builder sold

(a) Unless the case is within the Agricultural Holdings Act, 1875.

premises to M. when he had only an agreement for a lease. He afterwards obtained a lease and deposited it to Stohwasser, and afterwards gave Stohwasser a legal mortgage of it during the time that a tenant of M. was in possession. The tenant's possession was held to be constructive notice to Stohwasser, and M. was entitled to priority over Stohwasser accordingly.

101. *A tenant for life grants a lease of a dwelling-house for a term of ninety-nine years, if he (the tenant for life) should so long live. The lease contains the usual covenants on the part of the lessee. On the death of the tenant for life the remainderman finds the covenants to repair have not been fully performed, and that there are considerable dilapidations. Can he recover for such dilapidations against the lessee? Give the reasons for your answer.*

Yes, owing to the provisions of 8 & 9 Vict. c. 106, s. 9, and sec. 10 of the Conveyancing and Law of Property Act, 1881. The latter enactment is more comprehensive and simple than the former, and provides in effect that rent reserved by a lease, and the benefit of the lessee's covenants or provisions therein contained; having reference to the subject-matter thereof, shall be annexed; and shall go with the reversionary estate in the land or any part thereof immediately expectant, on the term granted by the lease, notwithstanding the severance of that reversionary estate, and shall be capable of being recovered, received, enforced, and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased. (Clerke and Brett's Conveyancing and Law of Property Act, p. 55.)

The provisions of 14 & 15 Vict. c. 25, s. 1, do not apply to such a case as this, because that Act was only intended to provide for the case of a tenant at a rack rent, whose interest in the land determined by his landlord's death and his tenancy was not expressly created, only to exist so long as the landlord should live, as in this case. Here the tenant took his lease upon that understanding. The case is not likely to arise now, owing to the provisions of the Settled Estates Act, 1877, and the Settled Land Act, 1882, giving the tenant for life powers of leasing in such a manner as to bind the inheritance.

102. *A mining lease contains a clause that the lessee may work the mine "in the usual and most approved way in which the same is performed in other works of the like kind in the country." The mine was worked in such usual and approved manner, but by reason of such working the owner of the surface sustained damage through its subsidence. Is he entitled to recover damage against the lessee of the mine, or does the above clause protect him?*

Yes, he is entitled to recover damage against the lessee of the mine, for by a covenant to work mines "in the usual and most approved way in which the same is performed in other works of the like kind in the county of G.," it was not meant such a mode of working as would let down the surface, and therefore the lessee is not absolved from his legal obligation to support the surface. The above clause therefore does not protect him. (*Davis v. Treharne*, 50 L. J. (H. L.) Q. B. 665; L. R. 6 H. L. App. Cas. 460.)

103. *What effect has the disclaimer of a lease by the trustee in bankruptcy of the lessee upon the lessor, the lessee, and any person claiming under the lessee as sub-lessee? How far does the original lessee continue liable under his covenants in the event of the bankruptcy of his assignee, whose trustee disclaims?*

Sect. 23 of the Bankruptcy Act, 1869, provides that "When any property of the bankrupt acquired by the trustee under that Act consists of land of any tenure burdened with onerous covenants, the trustee, notwithstanding he has endeavoured to sell or has taken possession of such property, or exercised any act of ownership in relation thereto, may, by writing under his hand, disclaim such property, and upon the execution of such disclaimer the property shall, if the same is a lease, be deemed to have been surrendered on the same date. Any person interested in any disclaimed property may apply to the Court, and the Court may order possession of the disclaimed property to be delivered up to him or make such other order as to the possession thereof as may be just, and any person injured by the operation of this section shall be deemed to be a creditor of the bankrupt to the extent of such injury, and may accordingly prove the same as a debt under the bankruptcy." And sect. 24 enacts that "The trustee shall not be entitled to dis-

claim any property in pursuance of this Act in cases where an application in writing has been made to him by any person interested in such property requiring such trustee to decide whether he will disclaim or not, and the trustee has for a period of not less than twenty-eight days after the receipt of such application, or such further time as may be allowed by the Court, declined or neglected to give notice whether he disclaims the same or not."

The trustee until so called upon in writing to decide has an unlimited time to disclaim or not. If the trustee does decide to disclaim, he must give up the fixtures in and about the demised premises, and notwithstanding the fact of there being an express power to remove fixtures after its determination being contained in the lease. (*Re Latham, Ex parte Gregg*, 51 L. J. Ch. 367; and see *Re Fussell, Ex parte Allen*, 51 L. J. Ch. 724.) The trustee before disclaiming a lease is bound by the rules to obtain the leave of the Court to do so. If leave is given, and immediately thereafter the trustee executes an unqualified disclaimer, the lessor cannot appeal from the decision of the registrar giving the leave. He should have applied to the registrar when he made the order to stay proceedings pending an appeal. (*Ex parte Sadler, Re Hawes*, 51 L. J. Ch. 201.)

The effect of a disclaimer under the above Act is not so as to surrender the lease to the lessor absolutely, like a disclaimer at common law, but only to surrender the lease so far as it is necessary to aid the bankrupt or liquidating debtor and his estate from all liability under the lease, and no further.

The effect is shown by the differing facts likely to arise, as, for instance,—

(a.) If there is a lessor and a bankrupt lessee, and the trustee disclaims, the lease and fixtures are surrendered to the lessor, who can prove against the estate for any damage he has sustained thereby.

(b.) If there is a lessor, lessee and assignee and the assignee becomes bankrupt, and his trustee disclaims, the lease is determined so far as the assignee is concerned, but still exists so as to enable the lessor to sue the lessee upon his original covenants contained in the lease. (*Smyth v. North*, 41 L. J. Ex. 103; *East and West India Dock Co. v. Hill*, 52 L. J. Ch. 44.



(c.) If there is a lessor, lessee and under-lessee, and the under-lessee becomes bankrupt, and his trustee disclaims, the same result follows as in the last case.

(d.) If there is a lessor, lessee and under-lessee, and the lessee becomes bankrupt, the lessor cannot sue the under-lessee, but he can distrain for the rent reserved by the lease, though that is double the amount he has covenanted to pay in his under-lease. The under-lessee will obtain leave to prove against the bankrupt's estate for any damage he incurs by the disclaimer upon the trustee applying for leave to disclaim. (*Ex parte Walton, Re Levy*, 50 L. J. Ch. 657 ; L. R. 17 Ch. D. 746.)

(e.) Where the lease is deposited by way of equitable mortgage, and the lessee becomes bankrupt, and his trustee applies for leave to disclaim, he will not be allowed to do so to the prejudice of the mortgagee.

It is still a moot point whether if a trustee of an assignee disclaims under the above Act, and the lessee pays the rent under his covenant, the lessee is entitled to take possession of the premises as against the lessor. It is laid down by the cases of *Re Latham*, *Ex parte Gregg*, and *Re Fussell, Ex parte Allen*, *supra*, that the original lessee becomes liable to pay the rent and perform the covenants contained in the lease upon the failure of the assignee to pay the rent and perform the covenants through his bankruptcy or otherwise.

104. *B., a lessee for a term of years, sublets to A. by deed for a shorter term. B. afterwards becomes bankrupt, and his trustee disclaims B.'s interest in the premises under the lease to him, pursuant to the provisions of the Bankruptcy Act. Thereupon C. (B.'s lessor) brings an action against A. to recover possession of the demised premises.*

*First.—Is the action maintainable?*

*Secondly.—Supposing it is not. What would the estate of C. be in the premises, and under what (if any) statute?*

*Give reasons for your answer.*

No; the true construction of sect. 23 of the Bankruptcy Act, 1869, with respect to the effect of a disclaimer of a lease by the trustee, with the leave of the Court, is that such a disclaimer is in its opera-

tion limited to relieving the estate of the bankrupt and his trustee from liability, and if by operating thus the rights of any one are, as regards the enforcement of liabilities against the bankrupt or trustees, interfered with by the disclaimer, they can prove against the bankrupt's estate for the amount of the injury they may have sustained. The rights, however, of third parties like the under-lessee here are not affected by the disclaimer. The estate, therefore, of C. is that of owner subject to the rights of the under-tenant (A.) created by the under-lease. (*Ex parte Walton, Re Levy*, 50 L. J. Ch. 687; L. R. 17 Ch. D. 140; *The East and West India Dock Co. v. Hill*, 52 L. J. Ch. 44.)

---

## LEGACIES.

105. *Define and illustrate general, specific, and demonstrative legacies; and explain the practical distinctions between them.*

A general legacy is one which does not relate to any individual thing or sum of money as distinct from other things of the same kind, or other moneys: for instance, a bequest of "a horse" of "one thousand pounds" or of "one thousand pounds stock."

A specific legacy is a bequest of a particular thing, sum of money, or debt, as distinguished from all others of the same kind. For instance, a bequest of "my horse Dobbin," "the five hundred pounds contained in my safe," or "the debt owing to me by B."

A demonstrative legacy is one in which, together with words of general description such as would create a general legacy, are used additional words pointing out a particular fund out of which it is to be satisfied. For instance, a bequest of "one thousand pounds out of my East India Stock."

The practical distinctions are that (1) a general legacy is liable to abatement on any deficiency of assets, but a specific legacy is not, at least until the funds provided for payment of the general legacies are exhausted; (2) a general legacy, however, is not, like a specific legacy, liable to ademption, except where the doctrine of satisfaction of legacies by portions comes in.

A demonstrative legacy is so far like a specific legacy that it will not abate with the general legacies until the fund out of which it is payable is exhausted, and it is so far like a general legacy that it is not liable to ademption by the alienation or non-existence of the property pointed out as the means of paying it; that being only the primary fund for payment. (Snell's Equity, 5th ed., 179—180; H. A. Smith's Equity, 516—527.)

106. *Is there any and what difference as to vesting, and as to carrying interest, between legacies charged on land and legacies payable out of personality?*

The law favours the immediate vesting of legacies payable out of personality, whilst it leans against the vesting of legacies charged on land until they become payable, unless the payment is postponed for adventitious reasons. The reason for this distinction lies in the fact that wills containing legacies payable out of personality were construed anciently according to the principles of the civil or Roman law, whilst wills of realty or affecting realty were construed according to the principles of the ancient common law, which favoured the heir. For an instance of the former, take *Pawlett v. Pawlett*, and of the latter take *Stapleton v. Cheales* (both found in Tudor's Leading Cases, pp. 720 and 724, respectively, and read the notes to those cases, and the cases of *Hanson v. Graham*, in Haynes's Student's Leading Cases, 226.)

Again, legacies charged on land carry interest as from the date of the testator's death, whilst general legacies not so charged carry interest as from one year after the testator's death, unless the testator expresses a contrary intention in his will, or unless the legacy is given in satisfaction of a debt or a widow's dower, or to an infant who is not otherwise provided for, or is specific, or is demonstrative so long as its proper fund pointed out by the will for payment remains. In the excepted cases, the legacies bear interest like legacies charged on land, at the rate of £4 per cent. from the testator's death. (H. A. Smith's Equity 526, 527.)

107. *A legacy is bequeathed in trust for A., a minor, absolutely, to accumulate until he should attain the age of twenty-five years, and then to be paid to him, with the accumulations. What are the*

*rights of the legatee with regard to the payments of the legacy, and what is the principle governing the case?*

The trust to accumulate after A. is enabled to give a valid discharge for the legacy, that is after he has attained twenty-one, being inconsistent with or repugnant to an absolute gift of such legacy, is wholly void. A. will, therefore, immediately on his attaining twenty-one be entitled to demand his legacy with the accumulations which have accrued thereon up till then, and if he is refused, he can recover it. (See *Bradley v. Peizoto*; Tudor's L. C., 3rd ed., 968; Haynes's Student's Leading Cases, 162.)

108. *A testator gave real and personal estate to trustees upon trust for his son, to vest in him on his attaining twenty-one, but if he should die under twenty-one, or having attained twenty-one, should die without having made a will, then upon other trusts declared by the will. What estate did the son take, and what is the rule of law governing the case?*

The son in this question, like A. in the last question, takes an absolute interest contingently on his attaining twenty-one, both as regards the real and personal estate, and upon the same grounds as those stated in the last answer; that where there is a gift with a condition inconsistent with and repugnant to such gift, the condition is wholly void; and, accordingly, the limitation to take effect on the son dying *after* twenty-one without having made a will is void. (See *Bradley v. Peizoto*, *supra*.)

109. *A testator devises all his real estate and bequeaths his personal estate to his sons A. and B. (his only children), in equal shares. A. dies in the testator's lifetime, a bachelor and intestate; B. survives A., but dies in the testator's lifetime leaving children, and having by his will devised and bequeathed all his real and personal estate to his widow. Who is entitled to the testator's real and personal estate? Give the grounds of your answer.*

To deal with B.'s share first, that share will not lapse, but will, under sect. 33 of 1 Vict. c. 26, devolve as if B. had survived the testator, *i.e.* it will devolve upon B.'s widow under B.'s will, provided (1) B. is a child of the testator (which he is), and (2) B.

leaves issue surviving him (which he does). Therefore, B.'s widow will take B.'s share.

Now to deal with A.'s share. As A. pre-deceased the testator and died a bachelor and intestate, sect. 33 will not help this case, and consequently his share will lapse, and in this case, will devolve as to so much of A.'s share as consists of real estate upon the testator's heir-at-law, who will in this case be probably B.'s eldest son, and as to so much of A.'s share as consists of personal property, upon the testator's widow (if any) and next of kin, who in this case will probably be all B.'s children. A.'s share cannot devolve upon B.'s widow along with B.'s share, because sect. 33 does not apply to property derived otherwise than by devise or bequest, and was only passed to prevent a lapse of such devise or bequest. (See 2 Prid., 11th ed. 389, 390.)

110. *A testator gives the following legacy: "I give to my nephew, J. S., his executors, administrators, and assigns, the sum of £1000, in which he is indebted to me, and I direct that my executors shall give to the said J. S., his executors, administrators, or assigns, a full receipt and discharge for the said debt." J. S. dies in the testator's lifetime. Does the legacy lapse? Give the grounds of your answer. Can you refer to any leading case on the point?*

Yes, because the words *his executors, administrators, and assigns*, are void, being but *surplusage et expressio eorum quæ tacitè insunt nil operatur*; and they are by supposition of law named only to take in succession and by way of representation as an heir represents the ancestor in case of an inheritance. The leading case is *Elliot v. Davenport* (Tud. L. C. Conv., 803; Haynes's Student's Leading Cases, 234.) If the legacy had been given to J. S. or his executors, administrators, or assigns, there would have been no lapse, the insertion of the *or* after his name having been decided in the case of such a legacy to show such to be the testator's intention.

111. *A testator makes the following bequest: "I bequeath to my niece, A. S., the wife of J. S., the sum of £500, due to me from the said J. S., and secured by his promissory note." He subsequently appoints "J. S." his executor. What are the rights of the parties*

*in respect of such legacy? Would the result have been different if the legacy had been given to the legatee's separate use?*

In the first case the benefit of the bequest to A. S. passes to J. S. by operation of law, it being personal property; and as J. S. is also the debtor, his debt will be extinguished thereby, both at law and in equity. The fact of his being appointed executor would alone, if the debt had not been mentioned in the will, have at law operated as an extinguishment of the debt, though in equity, if the estate were administered by the Court, the executor would have to account for it; and now, by sect. 25 of the Judicature Act, 1873, the rules in equity are to prevail. The debt being mentioned in the will in this case, is practically forgiven by being given to the wife. She would under the old law have had no equity to a settlement thereout, as there was nothing to receive, and the equity only attached to the receipt. (*Osborn v. Morgan*, 9 Hare, 434.) In the second case, the separate use being a creature of equity, the Court will, on an application being made by the wife (A. S.), order her husband (J. S.) to pay the legacy to her, treating her as a *feme sole* in such a case. (See H. A. Smith's *Equity*, 368, 369.) In the first case the wife gains nothing; in the second case she gains everything. This question was asked before 45 & 46 Vict. c. 75 came into operation.

112. *A testator gives legacies in the following terms: "In the first place, I give to each of my daughters the sum of £1000; in the next place, I give the sum of £500 each to my friends A., B., and C.; and lastly, I give £50 to each of my servants, E., F., and G." Testator's estate is insufficient for payment of all the legacies in full. In what proportion will they abate? Give the grounds for your answer.*

These are all general legacies, and in accordance with the general rule applicable to such legacies, on a deficiency of assets to pay all they will all abate rateably, unless the will shows a contrary intention. (See *Bothamley v. Sherson*, 44 L. J. Ch. 589; L. R. 20 Eq. 304.) The only question in this case, therefore, is whether the words "in the first place," "in the next place," and "lastly," show any such contrary intention. The case of *Beeston v. Booth*, 4 Madd. 161, decides this in the negative. The above legacies will therefore all abate rateably, and be paid *pari passu*. (Read the judgment in *Re Hardy, Wells v. Barwick*, 50 L. J. Ch. 246.)

113. *A testator bequeaths a sum of money to trustees, upon trust, to pay the income to his daughter for life, and after her death to apply the income in the maintenance and education of her children during their minorities, and on their attaining twenty-one, upon trust to divide the money equally among such children. There were four children; two attained twenty-one and died in their mother's lifetime, one survived his mother but died under twenty-one, and one attained twenty-one and survived his mother. Who, in your opinion, is entitled to the fund at the death of the mother, and what grounds can you suggest for a contrary contention?*

In our opinion the surviving child is entitled to the fund on the death of the mother, because on the authority of *Re Ashmore's Trusts*, 39 L. J. Ch. 202; L. R. 9 Eq. 99; *Re Grimshaw's Trusts*, 48 L. J. Ch. 399; L. R. 11 Ch. D. 406; and *Re Parker*, L. R. 16 Ch. D. 44, each child's share did not vest until each child attained twenty-one. Although it is true that if money is bequeathed to a particular legatee, with a direction for payment at twenty-one, and the income or some other interest in such money is given in the meantime, the money will be vested at once, and only the payment will be postponed, yet this rule does not apply where the gift is to a *class* of persons, and the income or any part of it is directed to be applied for the maintenance of the members of the class *generally*, and such direction is not confined to the share of each particular member. (*Re Parker, supra.*) The ground we can suggest for a contrary contention, besides what follows from what has been stated above, is that upon which the case of *Fox v. Fox*, L. R. 19 Eq. 286, rested, in which *Re Ashmore's Trusts, supra*, was not followed, and is inconsistent with all the cases on this point, which, it is believed, are all set out above. The ground of *Fox v. Fox, supra*, was that because in a case like that stated in the question there is no gift over of the residue of the income not applied for maintenance, it amounts to a bequest of the whole of the income, there is no distinction between a gift to a class or to any individual, and accordingly in the above case the money would devolve, as to one moiety only of the money, upon the child who attained twenty-one and survived the mother, and as to the other moiety, to the personal representatives of the child who survived the

mother but died under twenty-one. (See also 2 Prideaux, 11th ed., 380, 381.)

114. *What rule does the Court apply where there is a residuary bequest of personal estate to be enjoyed by several persons in succession? After what leading case has the rule been named? Can its operation be excluded by the testator? If it can by implication, without express words, give an instance of such exclusion.*

The rule is that where personal estate is given in terms amounting to a general residuary bequest to be enjoyed by persons in succession, the interpretation the Court puts upon the bequest is that the persons indicated are to enjoy the same thing in succession; and in order to effectuate that intention the Court, as a general rule, converts into permanent investments so much of the personalty as is to a wasting or perishable nature at the death of the testator, and also reversionary interests. The rule did not originally ascribe to testators the intention to effect such conversions, except in so far as a testator may be supposed to intend that which the law will do; but the Court, finding the intention of the testator to be that the objects of his bounty shall take successive interests in one and the same thing, converts the property as the only means of giving effect to that intention. (Sir J. Wigram, V.-C., in *Hinves v. Hinves*, 3 Hare, 611.) If, however, an intention may be gathered from the will to the effect that it was the intention of the testator that the property should be enjoyed *in specie*, the above rule for conversion will not apply. (*Pickering v. Pickering*, 4 My. & Cr. 299.) The leading case referred to is *Howe v. Earl of Dartmouth*, 2 Wh. & Tud. L. C. Eq. 296; Haynes's Student's Lead. Cases, 233.) Such intention may be shown by the express words of the will or by implication, as, for instance, where a lease for ninety-nine years, seventy-nine of which are unexpired, is limited upon trust for the testator's child for life, subject to the covenants and conditions in the lease contained, and after his decease the unexpired residue of the said term (if any) is limited upon trust for the eldest grandchild absolutely. Other intentions may be shown in the same way. See 2 Prideaux, 9th ed. 401.)

115. *What is the rule of the Court as to the income arising from leasehold or other personal property of a wasting description, speci-*



*fically or otherwise bequeathed to a tenant for life, with remainders over?*

*Apply the rule to the case of a leasehold house bequeathed to one for life, with remainder over, taken by a railway company, and the purchase money invested in stock.*

For the answer to the first part of this question, see last answer, *supra*.

In the case cited above, in which the facts are the same as *Askeu v. Woodhead* (App.), 49 L. J. Ch. 320; L. R. 14 Ch. D. 27, and in which the purchase was compulsory (assuming there is no contrary intention shown in the will, either expressly or by implication to the rule laid down in *Howe v. Earl of Dartmouth*), the tenant for life is entitled to have the purchase-money in Court, whether the income therefrom would be more or less than the net rental of the leaseholds, applied so as to produce an annuity for the number of years the lease would have run.

---

## LIBEL.

116. *Your client, the editor of a newspaper, has an action brought against him for libel. The libel cannot be justified, but it has been inserted in the paper simply through want of care on the part of the printer. What steps would you advise your client to take?*

We should advise the editor, if his paper is a daily or weekly one, to insert a full apology in his newspaper at the earliest opportunity. If the newspaper is published at intervals exceeding one week, we should advise the editor to write and offer to publish a full apology in any newspaper or periodical to be selected by the plaintiff, and if the plaintiff does not select one before the expiration of the latest time to go to print with his own newspaper, we should advise the editor to publish an apology in the next issue of his own newspaper in as prominent a part as that in which the libel was contained.

We should also advise the editor to admit the publication of the

libel in his statement of defence, and plead that it was inserted without actual malice and without gross negligence on his part (6 & 7 Vict. c. 96), in addition to pleading the apology. If the plaintiff is found at the hearing to have sustained no damage whatever by the libel the editor need not pay any money into Court. Formerly he had to pay some money into Court, but now he need not always do so, as 6 & 7 Vict. c. 96, has been amended in this respect by 42 & 43 Vict. c. 59. If the plaintiff has sustained any damage on account of the libel, the defendant should estimate the amount of the present and future damage (if any) so far as he is able, and pay that amount into Court, and plead it as being in satisfaction under the Judicature Acts and Rules, either before delivering his defence, or with the defence without leave, or subsequently with the leave of the Court or a judge first being obtained. (O. XXX. See W. H. H. Kelke's Digest of the Law and Practice under the Judicature Acts, 38, 39; 6 & 7 Vict. c. 96; Haynes's Student's Statutes, 2nd ed., 280; and see *Regina v. Holbrook*, 48 L. J. Q. B. 113; L. R. 2 Q. B. 42.)

---

## LIENS.

117. *Explain what is meant by an equitable lien, distinguishing it from a possessory lien at common law, and give an example of each. Show how an equitable lien arises on the dissolution of a partnership.*

An equitable lien is a hold upon property for the satisfaction of a claim attaching thereto under an express charge or contract or constructive trust.

A legal lien (or possessory lien at common law) is the right of a person to retain property of which he has the lawful possession until a debt due to him has been satisfied.

An instance of an equitable lien is that of the vendor's lien on real property, when the vendor has executed the conveyance and parted with possession, but has not received the purchase-money.

An instance of a legal lien is the right of a carpenter who has made a box to keep it until his charges therefor are satisfied, or a

solicitor to retain his client's deeds and papers until his costs are paid.

As to partnership liens, "the separate share or interest of each of several partners being only that which remains after the discharge of all liabilities to which the joint property is subject, and every assignment of or execution against the partnership estate in respect of the private debt of any partner being subject to those liabilities, it follows that on the dissolution of the partnership by the death, bankruptcy, or retirement of a partner, the retiring partner, the trustees of the bankrupt, or the representatives of the deceased, and conversely the solvent or continuing partners have a lien at law, as well as in equity, on the partnership estate for the satisfaction of all demands arising out of the joint business prior to the dissolution, or for allowances or payments agreed to be made upon the dissolution to the person claiming the lien. And if one partner draw a bill in the name of the firm to secure his separate debt the separate estate of the other partner will have a lien against the share of the surplus of the joint estate belonging to the drawer of the bill. This lien, which holds good against the representatives and trustee in bankruptcy of the continuing partners, has been distinguished from the ordinary lien or mortgage upon stock in trade, on the ground that the latter binds the stock in trade through all its changes, . . . . whereas this lien is a right to the property in the thing itself, preventing the sale of the existing stock without the consent of the executors of the surviving (! deceased) partner, and not extending to stock subsequently purchased. . . . This lien is no longer available after the continuing partner has *bond fide* assigned the property to a purchaser for value. . . . And even where on a dissolution the partnership property has been assigned to the continuing partner and he has undertaken to pay the debts and to indemnify the retiring partner against them, or the property has been specifically divided between the late partners, the lien is at an end. . . . The benefit of the lien is carried on to creditors of the partnership who, although before the dissolution they have no lien at law or in equity against the partnership effects, nor any right but that of suing and taking out execution, are entitled after dissolution, by virtue of the equities between the partners themselves, and so long as those equities subsist, but by no other right, to obtain satisfaction of their claims out of the partnership estate. Where the dissolution

has been caused by death the assets of the deceased partner are equally liable with the estate of the survivor, and may be resorted to without regard to the state of the accounts between the deceased and the surviving partners; and it is open to the creditor, if he thinks fit, to resort in the first instance to the deceased partner's assets, leaving his representatives to recover against the survivor. . . . The partner's separate estate may be released from the lien by the acceptance by the creditor of the survivors as his debtors." (Fisher on Mortgages, 3rd ed., vol 1, paras. 197—203 inclusive, pp. 142—146 inclusive, which see for further information.)

### LIMITATION OF ACTIONS.

118. *Give the period fixed by the Statute of Limitations within which actions may be brought in the following cases: (1) Simple contracts. (2) Specialties. (3) Libel. (4) Slander. (5) False imprisonment. (6) For land. (7) Penalties given by any statute to party grieved. (8) Illegal distress.*

- (1) *Six years.* (21 Jac. I. c. 16, s. 3.)
- (2) *Twenty years.* (3 & 4 Will. IV., c. 42, s. 3.)
- (3) *Six years.* (21 Jac. I. c. 16, s. 3.)
- (4) *Two years, unless it is slander of title, or slander which has caused special damage.* (21 Jac. I. c. 16, s. 3.)
- (5) *Four years.* (21 Jac. I. c. 16, s. 3.)
- (6) *Twelve years.* (37 & 38 Vict. c. 57.)
- (7) *Two years, unless the statute otherwise provides for it.* (3 & 4 Will. IV. c. 42, s. 3.)
- (8) *Six years.* (21 Jac. I. c. 16, s. 3.)

In case of disability of the party having the right of action, such action may, except in case 6, be brought within the above-mentioned respective periods after cesser of disability. In case 6, a period of *six years* is allowed after cesser of disability; but the right of action becomes entirely barred at the end of *thirty years* from the time when it first arose. (See Haynes's Student's Statutes, 2nd ed., 131—139.)

119. *What is now the law with reference to the Statute of Limitations in the following cases? Define the term "beyond seas."*

- (a.) *Absence beyond seas, or imprisonment of creditor.*
- (b.) *Absence beyond seas of one or more joint debtors.*
- (c.) *Part payment by one of several co-debtors, co-contractors, executors or administrators.*

*Refer to any statute on the subject.*

(a.) These facts do not entitle the creditor to any time within which to commence his action beyond the period fixed by 21 Jac. I. c. 16, s. 3. (19 & 20 Vict. c. 97, s. 10.)

(b.) In this case the time of limitation will run as to any one or more of several joint debtors who shall not be beyond the seas at the time the cause of action accrues, although some other or others of them is or are beyond the seas at that time; and a judgment recovered against the former will not be a bar to any action against the latter after his or their return from beyond the seas. (19 & 20 Vict. c. 97, s. 11.)

(c.) Such part payment has the effect of reviving the debt against those persons making the part payment, but does not affect the others. (19 & 20 Vict. c. 97, s. 14.)

"Beyond seas" is defined to mean "no part of the United Kingdom of Great Britain and Ireland, nor the islands of *Man*, *Guernsey*, *Jersey*, *Alderney*, and *Sark*, nor any islands adjacent to any of them, being part of the dominions of Her Majesty." (19 & 20 Vict. c. 97, s. 12; Chitty on Contracts, 9th ed., 745, 746, 769.)

120. *Promissory note payable on demand. From what time will the Statute of Limitations run as against the payee, and why? Is interest, although not mentioned in such a note, recoverable by statute or otherwise? If so, from the date of the actual note or demand of payment, and from what time would the Statute of Limitations run with regard to the interest?*

In the case of a promissory note payable on demand, the Statute of Limitations runs in favour of the maker, and, therefore, as against the payee from its date, because from its nature it is payable immediately. Besides it is not in practice given in cases where the debt secured thereby is intended to stand over for an unlimited time.

Interest, though not mentioned therein, is, in the case of a promissory note payable on demand, recoverable if it is dishonoured from the time of presentment for payment by the Bills of Exchange Act, 1882, s. 57 (c.) The interest will not run on, however, if the principal money secured by the note is barred by the Statute of Limitations. The debt may be kept alive by (1) a written acknowledgment from which a promise to pay is implied; (2) a conditional promise in writing with evidence at hand when required of the performance of the condition; (3) an absolute promise in writing; (4) part payment of principal; and (5) part payment of interest. (See Byles on Bills, 13th ed., pp. 347, 310.)

121. *A. is possessed of the surface of certain land, and B. is owner of the subsoil. B. excavates therein for minerals without causing any immediate apparent injury to the surface, but damage ultimately ensues and the surface subsides. From what time does the Statute of Limitations begin to run as against A.'s right to bring an action in respect of the damage? Give reasons for your answer.*

From the time that the damage first ensues to A.'s surface and not from the time when the excavation was first made, because A.'s cause of action is for the damage done to his surface which B. had no right to cause, and is not in respect of the excavation which B. had a perfect right to make. *Sic utere tuo ut alienum non lædas.* (*Backhouse v. Bonomi* (H. L.), 34 L. J. Q. B. 181; L. R. 9 H. L. C. 503; *Underhill on Torts*, Chap. IV., r. 17, p. 52.)

122. *Action to recover damages sustained by the plaintiff by reason of fraudulent representations contained in a prospectus of a company, such representations being false to the knowledge of the defendant, the promoter of the company. Defence, Statute of Limitations. Reply by plaintiff that he discovered the fraud within six years before action brought. Is the plaintiff entitled to recover under any, and if any, what circumstances? and refer to any authority (if any) upon the subject.*

The Statute of Limitations does not run in the case of fraud until the discovery by the defrauded person, provided he was without reasonable means of discovery. The plaintiff's reply will,

therefore, be good if he can show at the hearing that he had no reasonable means of discovering the fraud when it was actually committed by the defendant. (*Gibbs v. Guild*, 51 L. J. 228; see also *Smith v. Chudwick*, 51 L. J. Ch. (App.) 597.)

---

### MAINTENANCE.

123. *Equal legacies are given, one to each of a class of children, with a direction to accumulate the income, the principal with the accumulations to be paid at twenty-one, with survivorship in the case of the death of any under that age, to the others. Advise the trustees as to whether maintenance is allowable by them, or will be allowed by the Court.*

The law on the subject is now governed by sect. 43 of the Conveyancing Act, 1881. We should advise the trustees that without any application to the Court they may, at their sole discretion, pay to the parent or guardian (if any) of each infant, or otherwise apply for or towards the infant's maintenance, education, or benefit, the income arising from the investment of each of the legacies or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the maintenance or education of the infants or not. We should also advise the trustees that the residue of the income (if any) will have to be accumulated by them in the way of compound interest, and the resulting income thereof from time to time on securities on which they are by the will (if any), or by law, authorised to invest trust money, and that they must hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise. We should also explain, if necessary, that the trustees may at any time, if they think fit, apply those accumulations or any part thereof as if the same were income arising in the same current year. This advice would be subject to and qualified by any express provisions (if any) in the will on the subject. We should caution the trustees that if they, notwithstanding our advice, were likely to be obstinate or refuse to allow the infants a fair sum out of the income, the infants may apply to the Court by originating summons for an order for maintenance. (See Haynes's Chancery Practice, 453—455.)

## MASTER AND SERVANT.

124. *Does the relation of master and servant exist between A. and B. in the following case so as to make the former liable in damages to C., or is the relation only that of bailor and bailee? B., a cab driver, hires a cab and horse from A. for the purpose of plying for hire, at a fixed sum per day, the cab and horse to be returned every evening to A.'s stables. Whilst driving, B., by his sole negligence, runs into C.'s brougham, causing damage thereto. Give reasons for your answer.*

It is clear in the above case that at common law the relation that exists between A. and B. is that of bailor and bailee and not that of master and servant, and, therefore, A., without being guilty of any wrongful act or default, or authorising B. or any one else to be guilty of any wrongful act or default, has not at common law incurred any liability. (See *King v. Nugent*, 51 L. J. Q. B. 105; L. R. 8 Q. B. D. 104.)

Where, however, A. and B. are subject to the provisions of the Hackney Carriage Acts (*i.e.*, are within the metropolis), the relation between them is usually that of master and servant, *quoad* C. and the public, though as between themselves the relation is that of bailor and bailee. The above Acts do not, however, provide in all cases that the relation is that of master and servant, even as regards the public. (See *King v. Nugent*, *supra*, where the facts were peculiar, the proprietor only finding a cab at 10s. a week and the driver found the horse and harness.)

If, in the above case, A. and B. are subject to the above-mentioned Acts, A. will be liable. (See *Venables v. Smith*, 46 L. J. Q. B. 470; L. R. 2 Q. B. 279.)

125. *What is now the law with reference to the liability of employers for injuries sustained by their servants in the course of their employment? Refer to any recent legislation on the subject, and give the procedure under it.*

The law is, that subject to the provisions of the Act hereinafter mentioned, and in the absence of a contract expressly excluding that Act (*Griffiths v. Earl of Dudley*, 51 L. J. Q. B., 543), that a



master is not responsible to his servant for an injury happening to one of his servants in consequence of the negligence of another of his servants, provided the servants were engaged in one common employment, or in accomplishing one common general object; though not necessarily one common, immediate, or particular object, and provided the servant was not exposed to unreasonable risks, and the master endeavoured to select proper servants, and did not knowingly acquiesce in the negligence. (Smith's Man. Com. Law, 8th ed., 439.)

The Employers' Liability Act, 1880 (44 & 45 Vict. c. 42), came into operation on the 1st January, 1881, and enacted as follows:—

1. Where, after the commencement of this Act, personal injury is caused to a workman

(1.) By reason of any defect in the condition of the way, works, machinery, or plant connected with or used in the business of the employer; or

(2.) By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him while in the exercise of such superintendence; or

(3.) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed; or

(4.) By reason of the act or omission of any person in the service of the employer, done or made in obedience to the rules or bye-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or

(5.) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway, the workman, or in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer, as if the workman had not been a workman of nor in the service of the employer, nor engaged in his work.

2. A workman shall not be entitled under this Act to any right

of compensation, or remedy against the employer in any of the following cases; that is to say,

(1.) Under sub-section 1 of section 1, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the employer, or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition.

(2.) Under sub-section 4 of section 1, unless the injury resulted from some impropriety or defect in the rules, bye-laws, or instructions therein mentioned; provided that, where a rule or bye-law has been approved, or has been accepted as a proper rule or bye-law by one of Her Majesty's principal Secretaries of State, or by the Board of Trade, or any other department of the Government, under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or bye-law.

(3.) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or some person superior to himself in the service of the employer, unless he was aware that the employer, or such superior, already knew of the said defect or negligence.

3. The amount of compensation recoverable under this Act shall not exceed such sum as may be found equivalent to the estimated earnings, during three years preceding the injury, of a person in the same grade employed during those years in the like employment, and in the district in which the workman is employed at the time of the injury.

4. An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice that injury has been sustained is given within six weeks, and the action is commenced within six months from the occurrence of the accident causing the injury, or, in case of death, within twelve months from the time of death; Provided always, that, in case of death, the want of such notice shall be no bar to the maintenance of such action, if the judge shall be of opinion that there was reasonable excuse for such want of notice.

5. There shall be deducted from any compensation awarded to

any workman, or representatives of a workman, or persons claiming by, under, or through a workman, in respect of any cause of action arising under this Act, any penalty, or part of a penalty, which may have been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons, in respect of the same cause of action ; and, when an action has been brought under this Act by any workman, or the representatives of any workman, or any persons claiming by, under, or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty, or part of a penalty, under any other Act of Parliament in respect of the same cause of action, such workman, representatives, or person, shall not be entitled thereafter to receive any penalty, or part of a penalty, under any other Act of Parliament in respect of the same cause of action.

6. (1.) Every action for recovery of compensation under this Act shall be brought in a County Court, but may, upon the application of either plaintiff or defendant, be removed into a Superior Court in like manner and upon the same conditions as an action commenced in a County Court may by law be removed.

(2.) Upon the trial of any such action in a County Court before the judge without a jury, one or more assessors may be appointed for the purpose of ascertaining the amount of compensation.

(3.) For the purpose of regulating the conditions and mode of appointment and remuneration of such assessors, and all matters of procedure relating to their duties, and also for the purpose of consolidating any actions under this Act in a County Court, and otherwise preventing multiplicity of such actions, rules and regulations may be made, varied, and repealed from time to time in the same manner as rules and regulations for regulating the practice and procedure in other actions in County Courts.

7. Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury, and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

The notice may be served by delivering the same to, or at the residence or place of business of, the person on whom it is to be served.

The notice may also be served by post, by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business ; and, if served by post, shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post ; and, in proving the service of such notice, it shall be sufficient to prove that the notice was properly addressed and registered.

Where the employer is a body of persons, corporate or unincorporate, the notice shall be served by delivering the same at, or by sending it by post in a registered letter addressed to the office, or, if there be more than one office, any one of the offices of such body.

A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading.

8. For the purposes of this Act, unless the context otherwise requires :—

The expression “person who has superintendence entrusted to him,” means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour :

The expression “employer” includes a body of persons corporate or unincorporate ;

The expression “workman” means a railway servant and any person to whom the Employers and Workmen Act, 1875, applies.

9. The Act came into operation on the 1st January, 1881 ; and—

10. Is to continue in force till 31st December, 1887, and to the end of the then next session in Parliament. (Haynes's Student's Statutes, 2nd ed., 149—152 ; see recent cases of *McGiffen v. Palmer's Shipbuilding and Iron Co. (Ltd.)*, 52 L. J. Q. B. D. 25 ; *Munday v. The Thames Iron Works and Shipbuilding Co.*, 52 L. J. Q. B. D. 119.)

---

### MAXIMS.

126. *Explain and illustrate the maxim “Expressum facit cessare tacitum.”*

From certain facts and circumstances arising in connection with the dealings of certain persons, the law implies certain contracts or promises, but such implied contracts or promises only arise where there is no express promise between the parties, in accordance with this maxim, *Expressum facit cessare tucitum*, which, when construed, means "Express contracts or promises make implied ones of no effect." A party, therefore, cannot be bound by an implied contract when he has made an express contract as to the same subject-matter, even although the latter be avoided by fraud. He may, it is true, repudiate the contract entirely on this ground, but if he sues the other party in contract at all it must be on the express contract. Thus, although the word "demise" implies a covenant for quiet enjoyment, yet it is qualified and restrained by an express covenant for quiet enjoyment. Upon the same principle the custom of the country in regard to the claims of the outgoing tenant of a farm shall prevail even where there is a lease, if such lease contains no stipulations as to the terms of quitting which can exclude the custom; yet where the lease or agreement contains any express terms on the subject evidence of the custom shall be excluded. (Chitty on Contracts, 10th ed. 62, 98; see *Wigglesworth v. Dullison*, 1 Smith's L. C. 598; Dougl. 201; Haynes's Student's L. C. 73.)

127. "*Ignorantia juris haud excusat.*" Explain the application in equity of this maxim, and the sense to be given to the word "*jus.*" What is the rule as regards family arrangements?

This maxim means "Ignorance of law (*juris*) is no excuse," i.e., in cases where the maxim applies, if the consequences of a man's act are different from what he intended; and those consequences arise solely from his acting upon a misapprehension of the law on the subject, it will be no answer to say that he would have acted differently had he known the law. The maxim applies to all the rules of the common law. It does not, however, apply to all the rules which only formerly obtained in the old Courts of Equity, as, for instance, the doctrine of election. If a person is called upon pursuant to that doctrine to choose between two alternate rights under or against a deed or will, it is necessary for another person who wishes to assert that such person has elected, to prove, in cases of dispute, that the elector knew he had such rights, and the consequences of

electing either way, and with all this knowledge has elected deliberately. "*Jus*" here is limited to the rules laid down by the common law, the Legislature, and such of the rules of equity as do not require strict proof in cases of dispute that such doctrines were brought home to the notice of the party to be bound by its operation.

The rules or rather the practice of all the Courts is to support as far as possible family arrangements where there is no proof of *mala fides* or proof of fraud having been practised on the parties to them, provided all the parties are competent to enter into such arrangements. Where a family arrangement has been come to *bonâ fide*, and has been acted upon for years, it will require a very strong case indeed to upset it. The Court in so acting has regard to the importance of preserving honour and peace amongst the members of a family. Rights compromised in such cases are not judged by the same hard and fast rules as apply to rights compromised by strangers. Each party to a family arrangement must however disclose all material facts affecting the rights of each of the other parties known to him or her, although he or she may have greater facilities for obtaining information than the others have or can have.

This disclosure is not required in the case of compromises by strangers, unless there is a fiduciary relationship existing between the parties. (See *Gordon v. Gordon*, 3 Swanston's Rep. 400, and *Stapilton v. Stapilton*, 1 Atkyn's Reports, 2; 2 Wh. & Tud. L. C. Eq. 836; Haynes's Student's Leading Cases, 197; *Westby v. Westby*, 2 D. & War. 503; *Pickering v. Pickering*, 2 Boav. 31; *Williams v. Williams*, L. R. 2 Ch. 294; *Dunnidge v. White*, 1 Swanst. 137; *Stewart v. Stewart*, 6 C. & F. 911; *Scott v. Scott*, 11 Ir. Eq. Rep. 74; *Ellis v. Barker*, L. R. 7 Ch. 104.)

---

#### MERCANTILE LAW.

128. *Certain goods are sent to be laden on board a general ship. The goods are negligently stowed by the stevedore, who has been appointed by the shipper, and are damaged. Is the master of the ship liable for the damage? Will it make any, and if any what, difference if the charter-party contains a clause that the stevedore shall be paid by and act under the master's order?*

The master is not liable for the damage caused by the negligent stowage of the goods by the stevedore, because the stevedore was neither the servant nor agent of the master, for he was appointed by the shipper whose servant he was.

If the charter-party had in the above case contained a clause that the stevedore should be paid by and act under the master's order, it would not make any difference except as to any acts actually done by the stevedore in pursuance of, and in execution of the master's orders, and for such last-mentioned acts the master would be responsible if negligently done so as to cause damage. (*Blackie v. Stembridge*, 28 L. J. C. P. 329; 6 Com. B. Rep. N. S. 894; and see *Swainson v. Garrick*, 2 L. J. (N. S.) Exch. 255.)

129. *What advice would you give C. and Co. in the following case? and give reasons for the advice you give:—C. and Co. shipped a cargo of beans on board F. and Co.'s ship under a bill of lading from Alexandria to Glasgow, with leave to call at intermediate ports, deliverable to C. and Co.'s order, on payment of freight by consignee. The ship called at Liverpool, and on going out met with a collision (a peril excepted in the bill of lading) and was obliged to put back for repairs, which detained her a few days. The beans were damaged by sea-water in consequence of the collision, to which damage the attention of the master was called, and to the fact that they would be seriously injured unless taken out and dried at once, and then re-shipped. The master refused to take that course. The beans were carried on to Glasgow, and on their arrival they were much deteriorated in value beyond what they would have been had they been dried at Liverpool, where there was plenty of accommodation for doing so, during the time the ship was detained there.*

We should advise C. and Co. to sue F. and Co., the owners, for damages for the amount of the deterioration in value beyond what they would have been worth had they been dried at Liverpool. The cost of the unshipping, drying, and re-shipping of the beans at Liverpool might have been charged to the cargo as particular average, and the drying, &c., would not have unreasonably delayed the voyage. There was a duty upon the master of the ship as representing the owners to have taken such active measures to check

and arrest the injurious consequences of damage done to the cargo by perils excepted in the bill of lading. (See *Notara and Another v. Henderson and Others*, 41 L. J. Q. B. 158; L. R. 7 Q. B. 225.)

130. *B., a merchant in New York, buys a cargo of corn for and upon the order of C., a merchant in Liverpool, and takes a bill of lading for it deliverable to his own order. B. then draws bills of exchange for the cost of the cargo on C., which bills are accepted in due course, and sells them to a New York bank, to whom he also indorses the bill of lading. He sends invoices and a letter of advice to C., showing that the cargo is bought and shipped on his account. On arrival of the corn at Liverpool, and before payment of the bills of exchange, C. demands delivery, which is refused. What are the legal rights of the bank and C. respectively?*

The bank has a right to the corn should the bills be not paid at maturity.

If the bills are paid at maturity, C. has the right to the corn, and in order to secure it he can call upon the bank to indorse the bills of lading to him. (See *Gilbert v. Enignon*, L. R. 8 Ch. 16; *Ranken v. Alfaro* (App.), 46 L. J. Ch. 832; L. R. 5 Ch. D. 786; *Banco de Lima v. The Anglo-Peruvian Bank*, L. R. 8 Ch. D. 160.)

131. *A bill of lading contains special clauses exonerating the shipowner from even the perils induced by the negligence of his servants. During the voyage the cargo is damaged by sea-water, caused, as it afterwards turns out, by a negligent act of omission on the part of one of the crew, which rendered the ship unseaworthy before she left her port of loading. Will the clauses in the bill of lading prevent the owner of cargo from recovering against the shipowner in respect of such damage? Give reasons for your answer.*

No; the owner is liable to the cargo-owner upon his implied warranty that the ship is seaworthy, for there is here no agreement to the contrary. The special clauses in the bill of lading would exonerate the shipowner under the maxim *Expressum fuit cessare tacitum* did they apply, but they do not, because the bill of lading does not apply until the goods are actually received on board *Kopitoff v. Wilson*, L. R. 1 Q. B. D. 377, 380; *Cohen v. Davidson*,



L. R. 2 Q. B. D. 455 ; Smith's Man. C. L., 8th ed., 378). In this case both the negligent act and the damage were caused prior to the goods being received, for that is the last act before setting sail, and, therefore, the owner is liable under his implied warranty. Seaworthiness means that measure of fitness which the particular voyage or particular stage of the voyage requires ; so that a vessel seaworthy for port, and even for loading in port, may be without any breach of warranty whilst in port unseaworthy for the voyage, but if she put to sea in that state the warranty of seaworthiness for the voyage is broken. (See *Steel v. The State Line Steamship Co.* (H. L. Sc.), L. R. 3 App. 72 ; L. J. Digest, 1875 to 1880, 577, where the facts were similar to those above stated.)

132. *A. agreed with B. to ship on board a vessel a cargo of ice, and to despatch the vessel with all speed to any ordered port, vendor to forward bills of lading to purchaser, and on receipt thereof purchaser to take upon himself all risk and dangers of the seas, and the purchaser agreed to buy and receive the ice on its arrival and pay for it in cash on delivery at the rate of 20s. a ton, weighed on board during delivery. The vessel and cargo of ice thereon were lost during the voyage by risks and dangers of the seas within the meaning of the agreement, and after the receipt by the purchaser of the bills of lading. Can the vendor maintain an action against the purchaser for the value of the cargo ; and, on the other hand, can the purchaser maintain an action against the vendor for non-delivery of the ice ?*

The vendor can maintain an action against the purchaser for the value of the cargo on proof of (1) the agreement ; (2) the shipping of the ice on board, and that the bills of lading were forwarded in pursuance of that agreement ; and (3) the loss of the cargo during the voyage by the risks and dangers of the seas within the meaning of the agreement.

The purchaser cannot maintain an action against the vendor for the non-delivery of the ice, as the vendor is discharged from his liability to actually deliver the ice or to pay damages therefor. The risk of its loss during the voyage the purchaser took upon himself on receipt of the bills of lading. By the terms of the question he had received the bills of lading before the loss had happened.

133. *A contract for the sale of goods to be shipped stipulates for a price "to cover cost, freight, and insurance, payment by acceptance on receiving shipping documents." How is such stipulation understood by merchants, and what is the mercantile practice in reference thereto? Refer, if you can, to any leading case where it is explained.*

The terms at a price "to cover cost, freight, and insurance," payment by acceptance "on receiving documents," are very usual, and are perfectly well understood in practice. The invoice is made out debiting the consignee with the agreed price (or the actual cost and commission, with the premiums of insurance and freight, as the case may be), and giving him credit for the amount of the freight which he will have to pay the shipowner on actual delivery, and for the balance a draft is drawn on the consignee, which he is bound to accept if the shipment be in conformity with his contract, on having handed to him the charter-party, bill of lading, and policy of insurance. Should the ship arrive with the goods on board, he will have to pay the freight, which will make up the amount which he has engaged to pay. Should the goods not be delivered in consequence of a peril of the sea, he is not called on to pay the freight, and he will recover the amount of his interest in the goods under the policy. If the non-delivery is in consequence of some misconduct on the part of the master or mariner not covered by the policy, he will recover it from the shipowner. In substance, therefore, the consignee pays, though in a different manner, the same price as if the goods had been bought and shipped to him in the ordinary way. Per Lord Blackburn, in the House of Lords, in *Ireland v. Livingstone*, 41 L. J. Q. B. 201; L. R. 5 E. & L. App. 395. Of course if the consignee does not accept the bill of exchange drawn by the consignor, he cannot retain the shipping documents. (See *Shepherd v. Harrison*, L. R. 5 H. L. 116.)

134. *B., a merchant in Liverpool, sells and consigns, by a Liverpool ship, goods on credit to C., a merchant at New York. Before delivery, C. becomes bankrupt. What course would you advise B. to take? Supposing the seller had sent the buyer a bill of lading of the goods, would that in any, and what, case affect the seller's*

*rights? and what would be the effect if the seller had sent the buyer a delivery order for the goods instead of a bill of lading, and the buyer had, for a valuable consideration, indorsed the delivery order over to a third person?*

We should advise B. to send a telegram to the master of the ship before the goods are delivered, instructing him not to deliver the goods to C. at New York, but to re-ship them at B.'s expense and send them home, or to sell them at New York to the highest bidder. B. would thereby exercise his right of stoppage *in transitu*. If the master receives the telegram in time, he will be guilty of a breach of duty and will render his owner liable in damages to B. if he delivers the goods to C. at New York, notwithstanding the notice not to do so.

If B. has sent a bill of lading to C., and it is now in C.'s hands, B.'s rights would be unaffected, and our advice would be the same. If, however, C., after receiving the bill of lading, has transferred it to a *bond fide* purchaser for value without notice of the goods being sold on credit, or with such notice, but without notice of their not being paid, and without notice of C.'s insolvency, B.'s remedies as above stated will be defeated thereby, and B.'s only course is to prove under C.'s bankruptcy. A delivery order is now, by sect. 5 of the Factors' Act, 1877 (40 & 41 Vict. c. 39), made as effectual to defeat B.'s rights of stoppage *in transitu* as a bill of lading as above stated. (Haynes's Student's Statutes, 2nd ed., 85; Chitty on Contracts, 10th ed., 398.)

135. *What is meant by the term jus disponendi? Apply it to the following case:—*

*An unpaid vendor, shipping goods under a contract of sale, takes a bill of lading, making the goods deliverable to his order, and retains such bill of lading for his own protection. Does the vendor reserve any, and, if any, what, right beyond a lien for the price? What are the rights of the buyers?*

The term *jus disponendi* is generally used in connection with a mercantile transaction for the sale of goods, and means a right of disposition of the goods, notwithstanding the contract by the consignor. A delivery by the consignor of goods purchased by the consignee on board a ship belonging to the latter will generally vest

the *property* therein in him. It may not, however, do so, and will not do so if the bill of lading is so framed as to reserve to the consignor a *jus disponendi* over the goods, i.e., by making them deliverable to his order or assigns, or if from any other circumstance it appear that it was the intention of the parties to prevent the property passing, and to enable the consignor to retain a control over the goods. Accordingly, in the above cases, besides the ordinary vendor's lien and right of stoppage *in transitu* being reserved to the vendor, he can, on the purchaser's default in paying the whole of the price, and at any time whilst the purchaser is in default, dispose of the goods, and he will not be liable to an action equivalent to the old action for trover and conversion at the suit of the purchaser, though he tender the purchase-money after making default. (*Ogg v. Shuter* (App.), 45 L. J. C. P. 44; L. R. 1 C. P. D. 47. Consult also *Shepherd v. Harrison* (H. L.), 40 L. J. Q. B. 148; L. R. 5 E. & I. App. 116.)

136. *Distinguish between general average and particular average respectively.*

General average is the contribution made by the parties to an adventure towards a loss consisting in the sacrifices made or expenses incurred *by some of them for the common benefit of ship and cargo*.

Particular average comprises every kind of expense or damage short of total loss which regards a particular concern, and which is to be borne by the proprietors of that concern alone (*Stevens & Benecke on Average*, by Phillips, 341). It is the name given to a loss borne wholly *by the party upon whose property it takes place*. (2 Phillips on Insurance, s. 1422, *et seq.* See L. R. 1 C. P. 535, and 2 C. P. 357; Wharton's Law Lexicon, 6th ed., 418, 692; see Arnould on Marine Insurance, 4th ed., 819, *et seq.*)

137. *Can a policy of marine insurance be assigned so as to enable the assignee to sue upon it in his own name? and, if so, can it be assigned after loss of the ship or goods, the subject of the insurance? Refer, if you can, to any statute and decided case upon the subject.*

Yes, by the Policies of Marine Assurance Act, 1868. (31 & 32 Vict. c. 86, sect. 1; Haynes's Student's Statutes, 2nd ed., 145.)

The 1st section of the above-named Act is not confined to cases where the policy is assigned along with the goods before the loss, but also applies to a policy upon goods assigned after loss, and therefore the assignee of such a policy so assigned may sue upon it in his own name (*Lloyd v. Spence, Same v. Fleming*, 41 L. J. Q. B. 93; L. R. 7 Q. B. 299). If after a seller of goods has insured them and a loss has happened within the terms of the policy, and the goods have been delivered to a purchaser and the purchase-money paid, the seller assigns the policy to the purchaser, that purchaser cannot sue on the policy in respect of that loss under the above Act, because his assignor had no interest in the goods, the subject matter thereof, when he assigned the policy to the plaintiff, in the absence of an express contract that the policy should on the sale of the goods pass to the purchaser. (*The North of England Pure Oil Cake Co. (Limited) v. The Archangel Maritime Bank and Insurance Co. (Limited)*, 44 L. J. Q. B. 121; L. R. 10 Q. B. 249.)

138. *Can the assignee of a policy of marine insurance sue upon it in his own name? Refer to the statute, if any, upon the subject. If the assignee can sue in his own name, can the insurance company counterclaim for premiums or policies effected with them by the assignor after the date of the assignment?*

For the answer to the first part of this question, see last answer in the affirmative.

The insurance company cannot so counterclaim. 31 & 32 Vict. c. 86, sect. 1, only allows the plaintiff in such an action to do at law what he was only allowed before to do in equity, namely, to sue in his own name. It is a statute of procedure only, and not of substantive law. It enacts that the defendant may avail himself in such action of any defence which he might have availed himself of, if the action had been brought in the name of the assignor. The Judicature Act has not extended that Act so as to give the word "defence" in that section the meaning of "defence or counterclaim," or "defence and counterclaim." (*Pellas & Co. v. The Neptune Marine Insurance Co.*, 49 L. J. Q. B. 153; L. R. 5 C. P. D. 34.)

139. *What is meant by the term "constructive total loss" in reference to the law of marine assurance? and is there any, and, if any, what, act necessary to be done by the assured before he can maintain an action in respect of such loss against his underwriters?*

Constructive total loss is a term used in the law of marine insurance to denote a loss which entitles the assured to claim the whole amount of his insurance on giving to the assurers notice of abandonment. Generally there is a constructive total loss when the subject matter insured has not actually perished or lost its form or species, but has, by one of the perils insured against, been reduced to such a state or placed in such a position as to make its total destruction, though not inevitable, yet highly imminent, or its ultimate arrival under the terms of the policy, though not utterly hopeless, yet exceedingly doubtful. In such a case the assured, by giving notice within a reasonable time to the assurers of abandonment, *i.e.*, the relinquishment of all his right to whatever may be saved, is entitled to recover against his underwriters as for a total loss. (See Arnould on Marine Insurance; Wharton's Law Lexicon, 6th ed., 217.)

---

### MISREPRESENTATION.

140. *Can an executed contract be rescinded on the ground that it was obtained by means of a misrepresentation if it appear that such misrepresentation was made innocently and without any fraudulent intent? A's solicitor tells B. that he has forfeited his lease, and in consequence obtains from him a surrender of it on certain terms. Can B. avoid the surrender, the statement being in fact incorrect, but made bonâ fide?*

To rescind such a contract on such a ground, the plaintiff, to succeed in an action brought to rescind it, must prove:—

(1.) That he was induced to enter into the contract with the defendant (*i.e.*, the misrepresenting party) by means of representations which were material to, and did induce the plaintiff to enter into, the contract; and

(2.) That such representations were false in fact; and

(3.) Either that such representations were false to the knowledge of the defendant, or as to which at all events he made representations knowing he knew nothing about the facts—that is, representations made so recklessly as that in a court of law he would be in the same position as if the representations were false to his knowledge.

Although the representations were material to induce the plaintiff to enter into such a contract, and were false in fact, the Court will not rescind the contract on the ground of misrepresentation where the representations were not proved to be false to the knowledge of the defendant, and were not proved to have been made by the defendant recklessly, but with reasonable grounds for believing they were true and *bond fide*. In the question it is not stated that there were such reasonable grounds.

A defendant to such an action cannot escape liability merely because he had good intentions, and did not intend to defraud, or, in other words, if the three conditions are complied with such contract will be rescinded on the ground of misrepresentation, although it does appear that such misrepresentation was made innocently and without any fraudulent intent. (See judgment of the late Master of the Rolls in *Smith v. Chadwick*, 51 L. J. Ch. 600; see also *Arkright v. Newbold*, 50 L. J. Ch. 372; L. R. 17 Ch. D. 301; *Redgrave v. Hurd*, 51 L. J. Ch. 113; L. R. 20 Ch. D. 1, and the authorities cited in each case; and also *Jennings v. Broughten*, 5 De Gex, M. & G. 126, 140; 23 L. J. Ch. 999.)

Now, in the case of the surrender of the lease, we must premise that a solicitor, like a barrister, is presumed above all men to know the law, and cannot be heard to say that he acted under a misapprehension of what the law was in this particular case, that is, in other words, his ignorance in that respect cannot be used to show his *bond fides*, though it might be otherwise if he were a layman.

If, therefore, B. can show that the statement by the solicitor was material to and did induce him to execute the surrender, and that it was a false statement, and, presuming that the solicitor knew his law on the particular point involved, and that the statement was false to the solicitor's actual or presumed knowledge, he can apply to the Court to have the surrender declared void, if the other third

parties (if any) whose interests are prejudicially affected thereby can be restored *in statu quo*. (*Urquhart v. Macpherson* (P. C.), L. R. 3 App. Cases, 831.)

141. *Action for deceit or false representation. Firstly.—Will it be sufficient if the plaintiff proves simply that the representation was false in fact, and that he suffered damage in consequence so as to entitle him to a verdict? Secondly.—Supposing the defendant made the representation, being ignorant whether or not it was true, and it turned out to be untrue, will he be liable? Thirdly.—Is it necessary that the defendant should be benefited by the deceit, or that he should collude with the person who is? Give reasons for your answer to the above points, and refer, if you can, to any leading case.*

Firstly.—It will not be sufficient unless the plaintiff, besides proving that the representation was false in fact, and that he suffered damage in consequence, prove also either that the defendant did know that it was false, or made it without reasonable and probable grounds on which to suppose it to be true, and in either case made it with the intention of misleading the plaintiff.

Secondly.—The defendant will be liable if, being ignorant whether or not the representation is true, he made it without reasonable and probable grounds on which to suppose it to be true, as it is not necessary to show it to be untrue in order to recover a verdict, assuming, of course, that the other necessary ingredients requisite to recover a verdict just stated are proved.

Thirdly.—It is not necessary that the defendant should be benefited by the deceit, or that he should collude with the person who is, assuming the plaintiff's evidence to be sufficient to entitle him to a verdict as just stated above. The leading case referred to is *Pasley v. Freeman*, 2 Sm. L. C. 64; Haynes's Student's L. C. 87; Underhill on Torts, 203; and see *Arkright v. Newbold*, 50 L. J. Ch. 372.

142. *An agent of an insurance company, by fraudulently representing to B. that upon his insuring his life with the company he would be entitled to certain loans, induces B. to do so. B. pays the premiums upon the policy, say for five years, and then applies*



to the company for a loan, when he is informed that it cannot be granted, and that the agent had no authority to make any such representation.

*Firstly.*—Has B. any remedy, and, if any, to what extent, against the company?

*Secondly.*—What is the general rule of law affecting a company in cases of fraud committed by their agent?

B. has a remedy against the company to recover damages of such an amount as shall be equal to the sum the company has benefited by such misrepresentations in premiums paid by B. (*Jex-Blake v. The Albion Life Assurance Society*, 48 L. J. C. P. 169; L. R. 4 C. P. D. 94.) Of course B. has a remedy against the agent for the full amount of the damage he has sustained through his fraudulent misrepresentations, after deducting the sum, if any, recovered from the company, but the agent is probably worth nothing, and if so this remedy is of course valueless. (See *Swift v. Jewsbury*, 43 L. J. Q. B. 56; L. R. 9 Q. B. 301.)

The general rule of law affecting a company in cases of fraud committed by their agent is, that an action for deceit will lie against an incorporated company for such fraud if the fraud of the agent is the fraud of the company and the company is benefited thereby. (*A. Mackay and Another v. The Commercial Bank of New Brunswick and Others*, 43 L. J. P. C. C. 31; L. R. 5 P. C. 391.)

## MORTGAGES.

143. *What is an "equitable mortgage?" Give instances of the several ways in which an equitable mortgage may be made.*

A pledge or mortgage of any description of real or personal property which does not vest in the mortgagee the legal estate or interest therein, but which is recognised and enforced by the Courts in the exercise of their equitable jurisdiction.

An equitable mortgage may be made in the following ways:—

(1.) Where the subject of a mortgage is trust property, which security is effected either by a formal deed or a written memo-

random, notice being given to the trustees in order to preserve the priority.

(2.) Where the mortgage is a mortgage of an equity of redemption.

(3.) Where there is a written agreement only to make a mortgage which creates an equitable lien on the land with or without a deposit of the title deeds.

(4.) Where a debtor deposits the title-deeds of his estate with his creditor or some person on his behalf without even a verbal communication. The deposit itself is deemed evidence of an executed agreement or contract for a mortgage for such estate. (Wharton's Law Lexicon, 6th ed., 344).

144. *What are the rights of a mortgagee against a tenant of the mortgaged property, holding under lease executed previously to the mortgage, in respect of the rent and covenants reserved by and contained in the lease? In case such tenant should attorn, what is now necessary to complete such attornment?*

The mortgagee, assuming the mortgage of the freehold is made in the usual form (i.e., comprises the freehold) and is not made by demise, may, after giving the tenant notice of the mortgage, and after default has been made in payment of the principal and interest on the day named in the mortgage-deed, demand of the tenant the payment of all rent then due or to accrue due, and if it is not paid then he may distrain for it and sue for it, and can sue upon the covenants contained in the lease if they run with the reversion. The mortgagee cannot eject the tenant except for breach of covenant under the terms of the power of re-entry. (See *Moss v. Gallimore*, 1 Sm. L. C. 629; Haynes's Student's Leading Cases, 244.)

If the tenant attorns, all that is required is the consent of the landlord or landlord's lessor or lessors, or any mortgagee after the mortgage has become forfeited under 11 Geo. II. c. 19, sect. 11.

145. *A mortgagor subsequent to his mortgage grants a lease of the mortgaged premises whereby he covenants to repair. The mortgagee subsequently enters into possession and receives the rent. Can the tenant enforce the covenant to repair as against the mortgagee? What would be the position of the tenant as respects mortgagor and*

*mortgagee respectively, and is this position affected by the Conveyancing Act of 1881?*

The tenant, unless the facts prove acquiescence on the part of the mortgagee, cannot enforce the covenant against the mortgagee in possession if the mortgage is made prior to the 1st January, 1882, and the parties thereto have not adopted the provisions of sect. 18, sub-sect. (16), of 44 & 45 Vict. c. 41, by agreement in writing, and there is no express power to lease reserved to the mortgagor in the mortgage deed. (See *Keech v. Hall*, 1 Sm. L. C. 579; Haynes's Student's L. C. 243.)

If the mortgage was made after the 31st December, 1881, or if before, and the parties have adopted the Act as above stated, then by the Conveyancing and Law of Property Act, 1881, sect. 18, inasmuch as the mortgagor is empowered to grant a lease under certain conditions which will be binding on the mortgagee in the same way as if he had concurred therein, the tenant will be enabled to enforce his covenants against the mortgagor if in possession, unless the mortgage deed negatives this implied power of leasing. The same rule applies where the lease is made in conformity with an express power contained in the deed, whatever its date.

146. *Explain the doctrines of tacking and consolidation, and state the circumstances under which a mortgagee is entitled to the benefit of these doctrines. What recent legislation has taken place with regard thereto? (a)*

The doctrine of tacking gives a right to throw together several debts lent on the security of the *same* estate, and to do so under the priority and protection afforded by the legal estate, whereas consolidation gives a right to throw together on one estate several debts lent on *different* estates, and to do so without reference to any priority or protection afforded by the legal estate, and on the equitable maxim that he who seeks equity must do equity. (Snell's Equity, 5th ed., 318; see also *Baker v. Gray*, 49 L. J. Ch. 65; L. R. 13 Ch. D. 179; 28 W. R. 177; 41 L. T. 614; *Mills v. Jennings*, 49 L. J. Ch. 209; 28 W. R. 549; 42 L. T. 169, and in H. L. 51 L. J. Ch. 129; *Harter v. Colman*, 51 L. J. Ch. 481.) The doctrines may be illustrated as follows:—

(a) This question has been asked as follows:—"Illustrate the doctrines of tacking and consolidation of mortgages!"

Supposing there are two estates, named Whiteacre and Blackacre, each of which is mortgaged by A. to B. and C. respectively for £800 and £900 respectively. Besides these charges Whiteacre is, we will suppose, mortgaged to D. and E. as second and third mortgagees respectively to secure £400 and £200 respectively.

Now, suppose E. advanced his money to A. without notice of D.'s second charge and he redeems A.'s mortgage and obtains a transfer to himself, he can tack the money he lent on what turns out to be a third mortgage to the money he paid B. on the transfer, that is, £200 + £800 = £1000, together with interest and costs unpaid, and if he chooses to exercise the power of sale he can retain that £1000, with interest and costs, out of the proceeds before he pays D. a farthing on account of his £400 and interest and costs unpaid. If, however, E. knew of D.'s charge when he advanced the money, he could only retain £800, with interest and costs unpaid, out of the proceeds of the sale, and then must pay D. his £400, with interest and costs unpaid, and any balance in his hands after that must then be applied in liquidation of his own £200, with interest and costs unpaid, which he lent on a third mortgage.

Now, suppose instead of B. transferring his interest to E. he transfers it to C., who already has another first mortgage on some property of A. called Blackacre, and that A. has made default in paying both the mortgages off on the day named in the respective deeds (*i.e.*, usually six months after their dates), and D. or A. offers to redeem Whiteacre and to pay C. the £800, with interest and costs charged thereon. C. can claim against both D. and A., or either D. or A., to consolidate both his first mortgages together, and refuse to allow either of them to redeem one without he redeems both. He would, however, usually only exercise this right where Blackacre is an insufficient security for £900, and this would of course be all the more reason for D. or A. refusing to do so.

The law on the subject of consolidation has been recently modified by sect. 17 of the Conveyancing Act, 1881, though it is not abolished by that Act. (See *Wms. R. P.*, 12th ed., 439—442; *Snell's Equity*, 5th ed., 316; *Fisher on Mortgages*, 3rd ed., 599, 630.)

44 & 45 Vict. c. 41, s. 17, provides—"A mortgagor seeking to redeem any one mortgage shall, by virtue of this Act, be entitled to do so without paying any money due under any separate mortgage made by him or by any person through whom he claims on

property other than that comprised in the mortgage which he seeks to redeem." This section applies only if and so far as a contrary intention is not expressed in the mortgage deeds or one of them, and only where the mortgages or one of them are or is made after the 31st December, 1881.

147. *Upon what equitable principle does the doctrine of consolidation of mortgages rest? A. mortgages at different times two properties to a building society, with provisos for redemption on payment of certain instalments. Default is made in respect of one property, but not of the other. Can A. redeem either of the properties without the other?*

Upon the principle that a mortgagor shall not be permitted to redeem one property mortgaged by him without redeeming another property mortgaged by him to one person originally, or which has come into the hands of one person by conveyance when one property is a sufficient security for the money lent thereon whilst another is not. The Court, in allowing this, acts upon its own maxim, "He who comes into equity must do what is equitable." (Snell's Equity, 5th ed., 318.)

In the above case A. can redeem the property as to which default has been made without redeeming the other, for the doctrine of consolidation only applies where default has been made as to two or more properties in the hands of one person. (*Cummins v. Fletcher*, L. R. 14 Ch. D. 69; 49 L. J. Ch. (App.) 563; Haynes's Student's L. C. 239.) The Conveyancing Act, 1881, by sect. 17, has somewhat modified this doctrine. (See last part of answer to Question 146; and see Clerke & Brett's Conveyancing Act, 1881, p. 67.)

148. *Give an instance of the application of the rule that marshalling will not be enforced to the prejudice of a third party.*

That marshalling of securities held by creditors of a living person will not be so enforced the following will show:—If there is a first mortgage of both A. and B., and then a mortgage of B. only, and then another mortgage of both A. and B. to a third mortgagee without notice of the second mortgage, the securities will not be marshalled against the third mortgagee, so that the third mortgagee

will be paid out of A., so far as it is not exhausted in paying off the first mortgagee in preference to the second mortgagee. (*Barnes v. Raester*, 1 Y. & C. Ch. 401.) If, however, the third mortgagee had notice of the second mortgage at the time he made the advance it will be otherwise, for then the securities will be marshalled against the third mortgage. Thus, if in that event and in the above case B. is exhausted by the first mortgagee realising his money advanced thereout, then the second mortgagee will be allowed to claim against A. in priority to the third mortgagee to the extent of the money he would have received out of B. had the first mortgagee realised his security out of A. alone, or A. first and B. for the balance not realised out of A. (*Re Mower's Trust*, L. R. 8 Eq. 110; L. J. Digest, 1865 to 1870, 374; H. A. Smith's Equity, 515.)

149. *What was the object of "Locke King's Act" (17 & 18 Vict. c. 113), and how has the Act been extended by subsequent enactment?*

The object of Locke King's Act (17 & 18 Vict. c. 113) was to make the heir or devisee to whom any land which is subject to a mortgage debt shall descend or be devised take such land *cum onere* (i.e., subject to the mortgage debt), unless the mortgagor by his will or deed or other document has signified any contrary or other intention.

That Act has been extended by 30 & 31 Vict. c. 69, enacting (1) that a general direction given by the mortgagor in his will that all his debts shall be paid out of his personal estate shall not be deemed to be a declaration of an intention contrary to or other than the object of Locke King's Act, unless such contrary or other intention shall be further declared by words expressly or by necessary implication referring to all or some of the testator's debts or debt charged by way of mortgage on any part of his real estate; and that (2) "mortgage" in that and this Act shall extend so as to include any lien for unpaid purchase-money upon any lands purchased by a *testator*.

That Act has been further extended by 40 & 41 Vict. c. 34, enacting (1) that both the above Acts shall extend to lands of any tenure, thus including leaseholds as well as freeholds and copy-

holds; and (2) to an intestate as well as a testator; and (3) to equitable as well as legal mortgages; and (4) that a mortgagor does not show a contrary intention if he, by his will, simply charges or directs the payment of his debts out of his residuary real and personal estate, or residuary real estate. (Haynes's Student's Statutes, 2nd ed., 155.)

150. *Explain and illustrate the maxim, "Qui prior est tempore potior est in jure." Is it invariable in its application?*

*A person advances money on a third mortgage without notice of the second, and on discovering it buys in the first legal mortgage with power of sale, and then sells the property. How must the proceeds of sale be applied?*

"He who is first in point of time is stronger in law," is the meaning of the above maxim. It is not invariable in its application, inasmuch as it only applies where all other equities affecting a given case are in all respects equal. Then and then only does this maxim govern. Thus, where the legal estate is outstanding in trustees, and first A. lends £50 and then B. lends £20 to the same mortgagee on separate mortgages, A. obtains priority over B. simply because he is first in point of time.

In the above case, owing to the doctrine of tacking of moneys lent on the same security, the third mortgagee ousts the second mortgagee, and he will, therefore, after payment of the expenses of the sale, be at liberty to apply the proceeds in payment of the money secured by the first and third mortgage and pay the balance (if any) towards the liquidation of the second mortgage to the second mortgagee. (Fisher on Mortgages, 3rd ed., vol. 2, 599; Snell's Equity, 5th ed., 311; *Brace v. Duchess of Marlborough*, 2 P. W. 491; *Marsh v. Lee*, 1 Wh. & Tud. L. C. Eq. 659; Haynes's Student's L. C. 237, 238.)

151. *What is the meaning and object of attornment? Under what circumstances is it usual to insert an attornment clause in a mortgage?*

An attornment is the acknowledgment of a new lord on the alienation of land, and the assent or agreement of the tenant to attorn, as, "I become tenant to the purchaser." (Co. Litt. 309;

Wharton's Law Lexicon, 91.) Formerly its object was to enable the new lord to sue for his tenant's rent, for then no alienation of the reversion could affect the tenant without his own consent thereto. Such consent was given by attornment. No such consent is now required. It is now usually used in two cases only:—

(1.) Where a mortgagee wishes to enter into possession of premises which are in possession of tenants claiming under leases made by the mortgagor alone since the date of the mortgage, he, instead of ejecting them and then re-letting the same premises to them, gets them to execute an attornment of tenancy to him; and if they refuse he commences proceedings for ejectment, subject, however, to the provisions of sect. 18 of the Conveyancing Act, 1881.

(2.) Where the mortgagor is himself occupying the premises which he is about to mortgage. In such a case it is usual to insert an attornment clause in the mortgage deed, so that the mortgagee may be enabled to distrain (like a landlord for his rent) for interest, and sometimes for principal, in arrear, provided in the case of principal the clause is extensive enough to cover it. It is still usual, notwithstanding the provision of 41 & 42 Vict. c. 31, making such a provision, unless registered like a bill of sale, invalid against the mortgagor's execution creditors and trustees for his creditors under an assignment, or a liquidation or bankruptcy petition, though it does not make it void altogether.

It has been held that the rent reserved by the attornment clause must be of a reasonable amount with regard to the value of the premises, otherwise the attornment will be void, as a fraudulent preference. (*Re Stockton Iron Furnace Co.*, 48 L. J. Ch. 417; L. R. 10 Ch. D. 335; *Ex parte Jackson*, L. R. 14 Ch. D. 725.)

152. *Take the case of a second mortgage of real estate. The mortgagor is dead, and there is reason to suppose that he died insolvent. Explain the different proceedings which can be taken in the interests of the mortgagee, and specify which of them would have to be prosecuted in the Chancery Division.*

(1.) If the second mortgage confers by its terms or by 23 & 24 Vict. c. 145, or by 44 & 45 Vict. c. 41, a power of sale and a power to appoint a receiver, or either of them, he can exercise these



powers, or either power, as the case may be, as soon as they arise, subject to the first mortgagee's interest.

(2.) He can institute an action for administering the mortgagor's estate, either in respect of the whole of his secured debt, or the balance (if any) after valuing or realising his security. If he sues for the whole of his debt, he must give up his security for the benefit of the creditors.

(3.) He can institute an action for redemption of the first mortgagee's claim, if the latter will not consent to being redeemed voluntarily, and to claim to foreclose any third or fourth mortgagee's interest (if any); and in the alternative he may claim a sale of the mortgaged property, and in either case to have a receiver appointed.

(4.) He may claim a sale or redemption in the first mortgagee's action for foreclosure or sale (if any).

(5.) He may sue the personal representatives of the mortgagor under the covenant for his debt in the Queen's Bench Division.

In cases (2) (3) and (4) the proceedings will be prosecuted in the Chancery Division, unless the amount secured does not exceed £500, when proceedings may be taken in a County Court. (See H. A. Smith's Equity, 239 *et seq.*) The Court may in cases (2) (3) and (4) dispense with the personal representative of the mortgagor on its being shown that, owing to his having died intestate and insolvent, no one will take out administration under 15 & 16 Vict. c. 86, s. 44 (Haynes's Student's Stat., 2nd ed., 274), as was done in the case of *Curtius v. The Caledonian Fire and Life Insurance Co.*, 51 L. J. Ch. 80.

---

### NEGLIGENCE.

153. *A. walking on the roadway is knocked down and injured by a cart and horse driven by B. in the same direction as A. is walking. A. might have avoided the accident had he been walking on the foot-path. At the same time, B., by ordinary care, could have kept clear of A., and so also have avoided the accident. Give your opinion as to B.'s liability, if any, to A. for the injury, and refer to any leading case on the subject.*

The law on the subject of contributory negligence is clear, viz., that though a defendant may have been guilty of negligence in a

given case which would render him liable to an action at the suit of the plaintiff but for the part the plaintiff has taken in contributing to his own loss or injury, yet the plaintiff can recover (notwithstanding the plaintiff's contributory negligence) if the defendant might by the use of ordinary care have avoided the consequences of the plaintiff's mere negligence.

Every person has a right to walk both on the footpath and on the road, with the reservation that he must use when walking on the road more caution than he need use when walking on the footpath. In the above case A. has been guilty of no contributory negligence; and even if he had B. would be liable, for B. was bound to avoid an accident if he could by using ordinary care, and in the above case he did not. The case referred to is probably the case concerning the ass which had been left out in a public road with its legs tied by the plaintiff. The defendant drove over it and killed it. The defendant was held liable, for he was bound to drive carefully and avoid touching the ass. (*Davies v. Mann*, 10 M. & W. 549; see also *Boss v. Litton*, 5 C. & P. 407; Addison on Torts, 5th ed., 572; Underhill on Torts, 137—9.)

154. *B. takes a through ticket of the J. & S. Railway Company from London to a station on the G. & F. Railway, over which the J. & S. Railway Company have running powers. B. meets with an accident in the course of his journey on the G. & F. Railway through the negligence alone of that company's servants, and sustains thereby personal injuries. Is or is not the J. & S. Railway Company liable in damages to B. therefor? Give reasons for your answer, and refer to any case on the subject.*

The J. & S. Railway Company are liable in damages to B., because they have broken their contract with B. The contract with B. is upon every principle of law not merely a contract that the railway company will not be guilty of any negligence, but a contract that B. shall be carried with due and reasonable care along the whole line from one end of the journey to the other. (*Thomas v. The Rhymney Railway Company*, 40 L. J. Q. B. 89; L. R. 6 Q. B. 266; following *Blake v. The Great Western Railway Company*, 31 L. J. Exch. 346; 7 Hurl. & N. 987.) The case of *Wright v. The*

*Midland Railway Company*, 42 L. J. Exch. 89 ; L. R. 8 Exch. 137, seems, however, to conflict with the first and second cases above mentioned, and to decide the contrary. For a very recent case where the above cases were cited, *Foulkes v. The Metropolitan District Railway Company*, 49 L. J. C. P. 361 ; L. R. 5 C. P. D. 157, may be referred to, though the decision, being on a tort committed by the defendants, does not come within the terms of this question.

155. *A local board employs a contractor to repair a road. The contractor completes the work, but leaves a heap of stones on the side of the road. B. is driving along the road, comes in contact with the heap of stones, his carriage is upset, and he sustains damage. Assuming there was no contributory negligence on the part of B., who will be liable to him for the damage, the local board or the contractor, and why? Are there any circumstances which might arise to render both liable?*

Where a competent contractor is employed to do certain work the general rule is that the employer is not liable for the consequences of the contractor's default. The exceptions are: (1) where the employer retains his control over the contractor and personally interferes in the work, and makes himself a party to the act which occasions the damage, for then the contractor is reduced to a mere servant; (2) where the act contracted about is itself illegal; (3) where in the natural course of events, from the nature of the work to be done, injurious consequences are likely to arise, unless certain precautions are taken, and the employer has not seen that such precautions are taken; (4) where a legal duty is incumbent upon the employer, and the contractor omits or imperfectly performs such duty. (Underhill on Torts, 3rd ed., 51, 153; and see recent case of *Bower v. Peate*, 45 L. J. Q. B. 446; L. R. 1 Q. B. D. 321.)

In the above case the contractor alone will be liable, because the injuries sustained by the plaintiff were caused by the negligence of the contractor, or that of his workmen, which amounts to the same thing. The local board will not be liable, because it was not in the natural course of things that the contractor would be so negligent, and that such injurious consequences should happen to the plaintiff so as to bring the case within the principle of *Bower v. Peate*, *supra*. The principle of *Bower v. Peate* only applies to injuries which

could be foreseen by the employer. The above facts do not fall within any of the other classes. (See also *Angus v. Dulton*, 48 L. J. Q. B. D. 225; L. R. 4 Q. B. D. 162; and 50 L. J. (H. L.) Q. B. D. 689, where *Bower v. Peate* was approved of.)

Both would be liable if the contract had been to open the road and repair a sewer, and no barrier was placed round the opening by the contractor, and the plaintiff sustained damage through driving into the opening on a dark night, and no warning lights were to be seen.

156. *B. undertakes for reward to receive a carriage belonging to C., and lodge it in a shed, which has just been erected by a builder—as an independent contractor—for B. The shed is blown down by a high wind, and the carriage is damaged. B. was not aware of any defect in the shed, and he was not guilty of any negligence in selecting the builder. Advise C. as to his right of action, if any, against B. for the damage. Refer to any leading case bearing on the subject.*

We should advise C. that he has no cause of action against B., because B.'s liability is only that of an ordinary bailee for hire. (See *Searle v. Laverick*, L. R. 9 Q. B. 122, where the facts were similar.) The case of *Francis v. Cockrell*, L. R. 5 Q. B. 184 and 501, was a case of damage to the person caused by the unskilful erection of a building for viewing a public exhibition, and is distinguishable from *Searle v. Laverick*, *supra*.

---

#### NEIGHBOURING PROPRIETORS.

157. *Apply and explain the law in the following case:—A. constructed a reservoir on land separated from B.'s colliery by intervening land. B., before the construction of the reservoir had, by workings lawfully made, opened an underground communication between his own colliery and certain old workings under the reservoir. It was not known to A. that such communication existed, or that there were any old workings under the site of the reservoir. A was not personally guilty of any negligence. On the reservoir being*

*filled, the water burst down the shafts over which it had been constructed, and flooded B.'s mines.*

The facts in the above case are similar to those in the now leading case of *Rylands v. Fletcher*, L R 3 H. L. 330; 37 L. J. Ex. 161. There the plaintiff was the lessee of mines, and the defendant was the owner of a mill standing on land adjoining that under which the mines were worked. The defendant desired to construct a reservoir, and *employed competent persons* to construct it, so that there was no question of negligence. The plaintiff had worked his mines up to a spot where there were certain old passages of disused mines; these passages were connected with vertical shafts, communicating with the land above, which had also been out of use for years, and were apparently filled with marl and earth of the surrounding land. Shortly after the water had been introduced into the reservoir, it broke through some of the vertical shafts, flowed thence through the old passages, and finally flooded the plaintiff's mine. (Underhill on Torts, 13.) The House of Lords held the defendant was liable, on the ground that "a person who for his own purposes brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril; and if he does not do so, is *primâ facie* responsible for all the damage which is the natural consequence of its escape."

The case was, therefore, not decided on the ground of any negligence of the defendant. It was lawful for the defendant to collect and keep the water, but it was not lawful to let it escape. The escape was not like an act of God, for which no man would be responsible, but it was within the range of being an act or omission attributable to active or passive volition on his part, and for which the injurer is responsible to the injured. For an apparently similar case, but distinguishable on the latter ground, see *Nichols v. Marsland*, L. R. 10 Ex. 255, affirmed L. R. 2 Ex. D. 1; 46 L. J. Ex. 174.

158. *A. and B. are adjoining landowners. A. requires certain lawful work to be executed on his own premises, and employs C., a contractor, to execute such work. In the course, and in consequence thereof, injury is caused to the premises of B., he being entitled to the support for his house of A.'s soil. C., the contractor, before*

*commencing the work, has undertaken the risk of supporting B.'s house during the work, and to make good any damage, and satisfy any claims arising therefrom. Is A. thereby relieved from liability in respect of the damage done, and if so, why? If not, upon what principle of law is he liable?*

No, he is not relieved thereby, and is personally liable for any such damage. The contractor may be sued independently by A., or brought in as a third party against whom A., on being himself sued, may claim indemnity, if the Court does not refuse A. leave to so bring C. in. The principle involved is that a man who orders work to be executed from which, in the natural course of things, injurious consequences to his neighbour must be expected to arise, unless means are adopted by which such consequences may be prevented, is bound to see to the doing of that which is necessary to prevent the mischief. The removal of the soil, not in itself wrongful, becomes so immediately on its causing injury to the plaintiff's house, and having been ordered by the defendant, it then becomes his wrongful act, the responsibility of which cannot be thrown upon the agent he employs. (*Bower v. Peate*, 45 L. J. Q. B. 446; *Angus v. Dalton*, 50 L. J. Q. B. (H. L.) 689.)

---

### NOTICE.

159. *Explain the doctrine of notice, and apply it to the following case:—A. purchases an estate, with notice of an incumbrance held by B.; A. sells to C., who has no notice, and C. sells to D., who has notice. Can B. claim against D., and does it affect the question whether the estate sold is legal or equitable?*

He who has actual or constructive notice of an incumbrance is bound by it, whether his estate be a legal or equitable (or beneficial) one only. If a person purchases an estate without notice of any such incumbrance, and obtains the legal estate, he is protected against any such incumbrance. If a person purchase an estate still without notice of any such incumbrance, and only obtains the equitable (or as it is now more properly called the

beneficial) estate, he is not protected against any such incumbrance, but takes subject to it, for the owner of an equitable estate takes it subject to all the equities affecting it.

In the above case, assuming the estate sold to be the legal estate, B. cannot claim against D., because D. can take shelter under C.'s title. If this were not so, C. could not dispose of his good title to advantage. If the estate sold is only an equitable or beneficial one, then B. can claim against D. for the above reasons. (See H. A. Smith's Equity, 278, *et seq.*)

The doctrine of constructive notice is considerably limited in its operation by sect. 3 of the Conveyancing Act, 1882 (45 & 46 Vict. c. 39), and this section is retrospective in its operation, except as to actions pending at the commencement of the Act.

## NUISANCES.

160. *Give a comprehensive definition of the term "Common nuisance," and point out and illustrate by example each of the different classes of nuisance falling within your definition.*

A nuisance is something done which has the effect of prejudicially and unwarrantably affecting the enjoyment of the rights of another person. (Smith's Man. Com. Law, 8th ed., 8.) A public or common nuisance is a nuisance (as above defined) which affects the public, *i.e.*, all persons who come within the sphere of its operation, though it may affect some persons more than others. (*Vide id.* 9.)

Public or common nuisances are classed amongst crimes and misdemeanours, and are annoyances to all the Queen's subjects, whether by act of commission or omission. They are generally indictable only, and not actionable, for it would be unreasonable to multiply suits by giving every man a separate right of action for what damns him in common only with all others.

Public nuisances are :—

(a.) Annoyances in the highways, bridges, and public rivers, by rendering the same inconvenient or dangerous to pass, either

positively by actual obstructions, or negatively by want of reparations.

(b.) All those kinds of nuisances (such as offensive trades and manufactures) which, when injurious to a private person, are actionable, are, when detrimental to the public, punishable by public prosecution, and subject to a fine according to the nature of the offence.

(c.) All disorderly inns, ale-houses, bawdy-houses, gaming-houses, stage-plays unlicensed, booths, and stages for rope-dancers, mountebanks, and the like.

(d.) All lotteries.

(e.) The making and selling of fireworks in unlicensed places, or throwing them about in any street, on account of the danger that might ensue to thatched or timber buildings.

(f.) Eaves-droppers.

(g.) Common-scolds. (4 Steph. Com., 7th ed. 270.)

161. *What is the distinction between a public and a private nuisance, and what are the remedies respectively applicable? What must a plaintiff prove in order to obtain an injunction to restrain obstruction to light and air, or to obtain damages?*

A private nuisance is one which affects the comfort or enjoyment of only one individual, or at most, a limited class of individuals. A public nuisance is one which, as we have seen, similarly affects all persons who come within the sphere of its operation. The importance of the distinction lies in the fact that in the case of a private nuisance the injured person has a personal right to a civil action for its redress, though it is not in every case that he will be entitled to the special remedy of injunction.

If the act complained of is of such a nature as at the same time to interfere with the comfort or enjoyment of all within its reach, and to cause a special and distinct injury to a limited class of persons, it is both a public and private nuisance, and the person causing it is obnoxious to both remedies. The person or persons suffering the special damage may bring an action; and at the same time the Attorney-General may proceed on behalf of the public. But in order to justify the private action, the injury done to the plaintiff must be of a different character from that which he suffers



in common with the public. It does not suffice that from his mere proximity to the nuisance he happens to suffer more inconvenience than others. (H. A. Smith's Principles of Equity, 653.)

In the case of public nuisances, properly so called, an indictment or a criminal information lies, or in some small cases summary proceedings before magistrates may be taken to abate them and punish the offenders. A civil action (formerly called information in equity) also lies in the Chancery Division for an injunction, with or without joining a claim for damages, to redress the grievance, when the Attorney-General is made a party as representing the public. In cases of private nuisance the usual course would be now to commence an action in the Queen's Bench Division for damages, together with a claim for an injunction, which will be granted at the trial if the injury is such as is at all likely to be continued by the defendant. If the defendant threatens to continue the nuisance after service of the writ, the plaintiff should give notice of motion for an interlocutory injunction, which the Court will in most cases grant where there is shown a *prima facie* cause of action, and the nuisance is a material one, and the defendant does not undertake to desist until after the trial. (Snell's Equity, 5th ed., 569.)

To obtain an injunction to restrain obstruction to light and air, the plaintiff must prove (1) his title to the light and air, either by grant or prescription; (2) a material interference to his rights by the defendant; (3) that he has not been guilty of any unaccountable delay so as to amount to acquiescence on his part; (4) that damages alone will not afford him adequate relief under the circumstances. (Underhill on Torts, 186; Goddard on Easements, 2nd ed., 299.) There is no right *ex jure naturæ* to the free passage of light and air to a house or building.

---

#### PARTITION.

162. *What is the procedure of the Court in order to effect a partition, and what extension of powers with regard to this subject has been afforded by recent statutes?*

An action is commenced by one of several joint tenants or

tenants in common in possession against another of his co-tenants claiming a partition or sale. Statement of claim is delivered, and then, if the plaintiff's title is not disputed, he, with or without a statement of defence being delivered, delivers notice of motion for judgment, which is set down as "a short cause." If, however, the plaintiff's title is in dispute, pleadings are completed and notice of trial is given instead of notice of motion for judgment. Whichever mode is adopted the Court makes an order for partition or sale, and refers the matter to chambers. In case of an actual partition, the rights of the several parties are ascertained in chambers, unless it is a very simple case, when partition will be made at the hearing if desired. If the matter is referred to chambers the parties have liberty to carry in a scheme, and a summons is taken out to proceed thereon, and at the hearing directions are given as to the further prosecution of the matter. The rights of the parties, when ascertained, are embodied in the chief clerk's certificate. The partition is carried out by means of mutual conveyances, with or without a vesting order being obtained, under the Trustees Act, 1850 and 1852. If the parties differ, or if any of them are under disability, the conveyances will be settled by the judge in chambers. The matter is completed and costs directed to be taxed by an order made on further consideration. (Haynes's Chancery Practice, 225.)

For the recent statutes, see next answer.

163. *Describe briefly the principal provisions of the Partition Act, 1868, as to sales. Can parties interested in the property to one-fourth, compel a sale of the whole, contrary to the wishes of their co-owners?*

The chief provisions of the Act are as follows :—

Sec. 3. In a suit for partition where, if this Act had not been passed, a decree for partition might have been made, if it appears to the Court that by reason of the nature of the property, or the number of the parties interested, or presumptively interested therein, or of the absence or disability of some of those parties, or any other circumstance, a sale of the property and distribution of proceeds would be more beneficial for the parties interested than a division

of the property, the Court may, on the request of any of the parties interested, notwithstanding the dissent of others, direct a sale, and give necessary directions.

Sec. 4. In a like suit, if a party or parties interested individually or collectively, to the extent of one moiety or upwards in the property, request the Court to direct a sale and distribution of proceeds, instead of a division of the property, the Court shall, unless it sees good reason to the contrary, direct a sale, and give necessary directions.

Sec. 5. In a like suit, if any party interested requests the Court to direct a sale instead of a division of the property, the Court may, unless the other parties, or some of them, undertake to purchase the share of the party requesting the sale, direct a sale, and give necessary directions; and in case such undertaking shall be given, may order a valuation of the share, and give necessary directions.

Sec. 6. On any sale under this Act, the Court may allow any of the parties interested to bid on such terms as to non-payment of deposit, or as to setting off or accounting for the purchase-money, or any part thereof, instead of paying the same, or as to any other matters, as to the Court shall seem reasonable. (Haynes's Student's Statutes, 2nd ed., 160, 161.)

Parties interested in the property to the extent of one-fourth can compel a sale of the whole property, practically, if the whole property is from its nature not capable of actual partition, owing to the decision of the House of Lords in *Pitt v. Jones*, 49 L. J. Ch. 795; L. R. 5 App. 651, upon the construction of the above sections of the Partition Act, 1868. The Act, the Court said, was passed to give parties a sale instead of their partition, and not a purchase of one person's share at a valuation by a co-tenant against that person's will. It therefore followed that where the land was incapable of actual partition, as was the case there, the Court had no other alternative but to decree that the property should be sold, although the owners of thirteen sixteenth parts objected to a sale, and the owners of three sixteenth parts only required a sale.

164. *State briefly the provisions of the Partition Act, 1868, as to sale, and point out under what circumstances (if any) one party is enabled to prevent a sale by undertaking to purchase the other shares at a valuation.*

For provisions of the Partition Act, 1868, see the preceding answer.

It has been recently decided in the House of Lords that where land was incapable of actual partition, and the owners of three sixteenth parts thereof requested a sale, and the owners of the remaining thirteen sixteenth parts thereof objected to a sale, and offered to undertake to purchase the share of the owners of the three sixteenth parts at a valuation, which they refused to accept, the latter could insist on a sale, by auction, of the whole land, and were not bound to take a sale of their share at a valuation. (*Pitt v. Jones*, 49 L. J. Ch. 795.)

165. *Three co-heiresses, entitled to freehold and copyhold hereditaments, and also, as next of kin, to certain leasehold premises, have agreed to effect a partition. One co-heiress is a married woman, upon whose marriage no settlement was made, and it is desired that her share shall be conveyed to her separate use. Give an outline of the instrument or instruments required to carry out the partition.*

The only instruments required will be the deed of partition (which in this case should be engrossed and executed in triplicate) and the different surrenders of the copyhold. The deed of partition will contain date, parties (i.e., three: heiress, husband and grantee to uses), recitals of the title of the ancestor to the properties, his death, with names and description of the three heiresses and of the marriage of the one who is married, and name and description of her husband, and lastly, the terms of the agreement for partition and the sum (if any) to be paid for equality of partition. 1st. Testatum and conveyance of freeholds as beneficial owner to the grantee to such uses as may have been agreed upon. 2nd. Testatum and covenant also as beneficial owner to surrender the copyholds to the lord of the manor to the uses agreed on. 3rd. Testatum assignment of the leaseholds also as beneficial owner in the manner agreed upon, special covenants (if any), and such special powers of distress, entry, &c., as may be deemed expedient. The husband of the married daughter will join in the conveyance, which will have to be acknowledged, and declare the separate use. (1 Prid., 11th ed., 388.) If the property is vested in the married woman since 1st January, 1883, then the husband's concurrence and the acknowledgment will be dispensed with owing to 45 & 46 Vict. c. 75.

## PARTNERSHIP.

166. *Give a definition of the term Partnership as used in this country as distinguished from corporations and companies, and explain shortly the salient points in your definition.*

A partnership may be defined to be "a voluntary unincorporated association of individuals standing to one another in the relation of principals for carrying out a joint undertaking for the purpose of a joint profit." It is *voluntary*, not created by the Crown or by an Act of Parliament. It is *unincorporated*, i.e., the members do not form a collective whole, distinct from the individuals composing it. The rights and liabilities of a partnership are the rights and liabilities of the partners, and enforceable by and against them individually. A partnership is generally constituted for profit; a corporation may be constituted without any reference to profit. Moreover, an important distinction between partnerships and companies is, that a partnership consists of a few persons known to each other; a company of many individuals not necessarily acquainted with each other. (Mozeley's Law Exam. Journal, No. 54, pp. 325, 326, citing Lindley on Partnership, 1—5.)

167. *What principle as to partnerships was laid down in Cox v. Hickman? The policy-holders in an assurance society are entitled to be paid as bonuses a share of profits, such profits to be ascertained by an actuary appointed, not by them, but by the shareholders. Are the policy-holders liable as partners, either inter se or to outside creditors?*

The House of Lords in *Cox v. Hickman*, L. R. 8 H. L. Cases, 268 (Haynes's Student's Leading Cases, 113), decided that the mere concurrence of creditors in an arrangement under which they permit their debtor, or trustees for their debtor, to continue his trade, applying the profits in discharge of their demands, does not make them partners with their debtor or their trustees; or, in other words, in order to ascertain whether two or more persons are liable as partners, it is not sufficient to constitute the relation of partners that there is a mere sharing of the profits, or receipt of a payment varying with the profits of a business.

The result of the cases (says H. A. Smith in his Principles of Equity) and true test of a partnership amounts to this, that the

real intention of the parties must be ascertained by a consideration of the facts of each particular case, and that that intention determines the nature of the relationship between them. On the one hand, a sharing of profits does not alone constitute a partnership. On the other hand, if it appears that a partnership in effect was contemplated by the parties, its natural consequences cannot be evaded by procuring an advance of capital under the outward and pretended form of a loan. (H. A. Smith's Equity, 538.)

Such policy-holders are certainly not liable as partners *inter se* where there are shareholders in the assurance society; but as to their liability or non-liability with regard to outside creditors, that is another question. This depends in each case upon the constitution of the assurance society, because every such society or company, whatever it may be called, always consists of more than twenty persons, and in accordance with sect. 4 of the Companies Act, 1862, 25 & 26 Vict. c. 89, s. 4 (Haynes's Student's Statutes, 2nd ed., 57), must be either—

- (1.) Registered under the Companies Acts, 1862 to 1880;
- (2.) Formed pursuant to some other Act, special or otherwise;
- (3.) Formed under letters patent from the Crown; or,
- (4.) A company engaged in working mines within and subject to the jurisdiction of the Stannaries;

and in every such case full provision is made with regard to the liability to the debts of the company; and consequently it is only in the absence of any such provision that the general common law of partnerships affects such companies. Such a case might arise where the special Act by which the company is incorporated does not make any declaration or other provision as to the liability of policy-holders, participating and non-participating; but no such case has ever yet arisen before the Courts, and, as far as we are aware, is unlikely to arise, simply because in the case of every company incorporated by special Act of Parliament, an express declaration is made in the Act to the effect that neither participating nor non-participating policy-holders shall be liable as partners by being such, and such companies are seldom, if ever, formed under letters patent; and there therefore only remains companies registered under the Companies Acts, 1862 to 1880.

Now on this point it has been decided that in the case of an unlimited assurance company registered under the Companies Acts,

1862 to 1880, and whose Articles of Association provide for two classes of members, members and participating shareholders, and give both classes a voice in the management, that on that company being wound up by the Court the participating policy-holders are liable to be placed in the second list of contributories, the first list containing only the shareholders, properly so called. (*Re Albion Life Assurance Society, Winstone's Case*, 48 L. J. Ch. 607; L. R. 12 Ch. Div. 239; and see *The Albion Life Assurance Society*, 49 L. J. Ch. 593; L. R. 15 Ch. D. 79, where the same policy-holders were held to be only secondarily liable to pay a call made in the winding-up of the society, and were not liable at all to pay a call made whilst the society was a going concern; and see *Re The Albion Life Assurance Society, Ex parte Brown*, 50 L. J. Ch. 714, where a policy-holder who had the good fortune to have assigned his policy away prior to the winding-up was held not to be liable at all in the winding-up as a contributory. The holders of policies in mutual societies are not under any liability, it may be mentioned here, to contribute to the payment of any of the society's debts. (*Re The Great Britain Mutual Life Assurance Society*, 51 L. J. Ch. 10.)

168. *Is it correct to say that partnership contracts are joint at common law, but joint and several in equity?*

*Can a joint creditor of a partnership support an action for administration of the estate of a deceased partner? If so, who would be parties to the action, and what special directions in the order would be necessary?*

No, it is not. Every partner is liable jointly with the other partners for all debts and obligations incurred while he is partner and in the usual course of the partnership business by or on behalf of the firm.

It has been recently decided by the highest authority, that as between living partners and creditors, the liability for the debts of the partnership is joint only, and not several. (*Kendall v. Hamilton*, (H. L.) 48 L. J. C. P. 705; L. R. 4 App. Cas.) If, however, a partner dies, his estate then becomes severally liable to the unsatisfied debts and obligations of the partnership, and creditors may, at their option, pursue their remedies against the

surviving partners or partner or against the estate of the deceased partner; and it is immaterial what is the state of accounts between the partners, or what the ability of the survivors to pay. In the distribution, however, of the estates of deceased partners in Chancery, and of bankrupt and insolvent partners in bankruptcy, the partnership property is applied as joint estate in payment of the debts of the firm; and the separate property of each partner is applied in payment of his separate debts. If in either case there is a surplus, then the surplus of the joint estate is applicable for the payment of the separate debts, and the surplus of the separate estate for the payment of the partnership debts. (H. A. Smith's Principles of Equity, 546.)

The parties to the action would be—

(1.) The creditor of the firm as plaintiff, suing on behalf of himself and all other creditors, joint as well as separate, of the deceased partner;

(2.) The executors or administrators of the deceased partner; and

(3.) The surviving partner or partners as defendants.

The form of the judgment would include the following declarations and directions:—

(1.) A declaration that all persons who are creditors of the deceased are entitled to the benefit of the judgment.

(2.) A declaration that the surplus of deceased's estate was liable at the time of his death to the joint debts of the firm, but without prejudice to the liability of the surviving partner as between himself and the estate of the deceased.

(3.) A direction that an account be taken of the funeral and testamentary expenses and separate debts of the deceased, and of the debts of the firm.

(4.) A direction that an account be taken of the personal estate of the deceased.

(5.) A direction that his personal estate be applied, first, in payment of his separate debts and funeral expenses, and then in payment of the debts of the firm.

(6.) If the personal estate be insufficient, inquiries are ordered respecting the real estate of the deceased.

(7.) The judgment will, if necessary, direct inquiries whether the creditors of the firm continued to deal with the surviving partners,



and what sums have been paid by them to such creditors, and whether such creditors have, by their dealings with the surviving partners, released the estate of the deceased. (Mozeley's Law Exam. Journal, No. 49, p. 131, citing Lindley on Partnership, 4th ed., 369—373; 1053—1056.)

169. *What are the tests of the existence of a partnership quoad third parties? State shortly the leading provisions of any recent Act bearing on the point, and show how far these provisions have altered the general law.*

The present state of the case law on the subject is, that the real test is the intention of the parties to the alleged partnership contract. The mere sharing of the profits does not alone constitute a partnership at law or in equity. If it is shown that the parties intended to appoint each other the other's agent in transacting the alleged partnership business, and they agreed to share the profits and losses between themselves in certain proportions, no doubt a partnership would be thereby created.

It must also be remembered that if it appears a partnership in effect was contemplated by the parties, its natural consequences cannot be evaded by procuring an advance of capital under the outward and pretended form of a loan. (H. A. Smith's Equity, 538.) The principle that a mere sharing of the profits or receipt of a payment varying with the profits of a business is not of itself sufficient to constitute the relation of partnership therein, was established by the case of *Cox v. Hickman* (L. R. 8 H. L. 268; 30 L. J. C. P. 125; Haynes's Student's Leading Cases, 113; H. A. Smith's Equity, 535, 536.) And this was shortly afterwards amplified and defined by Bovill's Act, i.e., 28 & 29 Vict. c. 86. (Haynes's Student's Stat., 2nd ed., 164.) That Act, which is the one referred to in the question, enacted that—

(1.) The advance of money by way of loan to a person engaged or about to engage in any trade or undertaking, upon a contract in writing with such person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on such trade or undertaking, shall not of itself constitute the lender a partner, or render him responsible as such.

(2.) No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking by a share of the profits, shall of itself render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

(3.) No person being the widow or child of the deceased partner of a trader, and receiving by way of annuity a portion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed a partner of or subject to the liabilities of such trader.

(4.) No person receiving by way of annuity, or otherwise, a portion of the profits of any business in consideration of the sale by him of the goodwill of such business shall, by reason only of such receipt, be deemed to be a partner of or subject to the liabilities of the person carrying on such business.

(5.) In the event of any such trader as aforesaid being adjudged a bankrupt, or arranging to pay his creditors less than 20s. in the pound, or dying in insolvent circumstances, the lender of any such loan as aforesaid shall not be entitled to recover any portion of his principal, or profits, or interest payable in respect of such loan, nor shall any such vendor of a goodwill as aforesaid be entitled to recover any such profits as aforesaid until the claims of the other creditors of the said trader for valuable consideration in money or money's worth have been satisfied.

(6.) In the construction of this Act the word "person" shall include a partnership firm, a joint stock company, and a corporation.

The above Act has really done little more than enact, in statutory form, what before was the law of the land on the points to which it extends. Bramwell, L.J. (then B.), said in *Holme v. Hammond*, 41 L. J. Ex. 157, 163, that the above-named Act was in truth passed before the effect of *Cox v. Hickman*, *supra*, was understood. *Holme v. Hammond* was a case where it was sought, but without success, to make the executors of a deceased partner liable as partners with the survivors.

170. *A. advances £1000 by way of loan to B., a trader, upon a contract in writing that A. shall receive a rate of interest varying with the profits of the trade carried on by B. Will such agreement constitute a partnership between them or not? Give reasons for*

*your answer. In the event of B. becoming bankrupt, what position will A. be in as to ranking with other creditors on B.'s estate?*

The above facts will not of themselves constitute A. a partner with B. (See sect. 1 of 28 & 29 Vict. c. 86, cited in the preceding answer.)

The intention is now the only real test whether a transaction constitutes a partnership or not between the parties thereto. (See *Cox v. Hickman*, L. R. 8 H. L. 268; 30 L. J. C. P. 125; Haynes's Student's Leading Cases, 113.) If B. becomes bankrupt, A. cannot claim payment of either principal or interest until all B.'s creditors have been paid 20s. in the pound, by virtue of 28 & 29 Vict. c. 86, s. 5, cited in the preceding answer.

If, in a case like the above, the loan is only a matter of form to hide the real nature of the transaction, then a partnership would arise. (*In re Megevand, Ex parte Delhussé*, (App.) 47 L. J. Bankr. 65; L. R. 7 Ch. D. 511; *Pooley v. Driver*, 46 L. J. Ch. 466; L. R. 5 Ch. D. 458.)

---

#### PATENT RIGHTS.

171. *In an action for the infringement of letters patent, what step must the plaintiff and defendant respectively take in addition to the delivery of statement of claim and statement of defence and in reference thereto, and under what statute; and what will be the consequence of the omission to take such additional steps?*

In addition to the delivery of the statement of claim the plaintiff must deliver to the defendant or his solicitor particulars of the infringements complained of.

In addition to the delivery of the statement of defence the defendant must deliver to the plaintiff or his solicitor particulars of his objections to the plaintiff's patent upon which he intends to rely at the hearing of the action.

Without such particulars the plaintiff on his part cannot go into evidence relating to the defendant's infringement of his patent, and the defendant on his part cannot make any objections to the plain-

tiff's patent at the hearing. (See 15 & 16 Vict. c. 83, s. 41; The Law Students' Journal, 1881, vol. 3, p. 39.)

### PENALTIES AND FORFEITURES.

172. *Give a general rule (independently of particular statutes) as to the cases in which the Court grants relief against penalties and forfeitures, and apply the principle of such rule to the cases of forfeiture of a lease for non-payment of rent, and for non-repair, respectively.*

The true ground of relief against penalties is from the original intent of the case where the penalty is designed only to secure money, and the Court can give by way of recompense for the breach complained of all that was expected or desired at the time of entering into and by the term of the contract under which the penalty is recoverable. (See *Peachey v. Duke of Somerset*, 2 Wh. & Tud. L. C. Eq. 1100; Haynes's Student's Leading Cases, 251.) The only grounds upon which a forfeiture could be relieved against until recently were (1) fraud or (2) mistake, except in two cases. Those two cases were provided for by statutes, and are—

(1.) For non-payment of rent reserved in a lease if application was made within six calendar months. (23 & 24 Vict. c. 126, s. 1, *i.e.*, C. L. P. Act, 1860.)

(2.) For non-performance of a covenant to insure. (22 & 23 Vict. c. 35, ss. 4 to 9; 23 & 24 Vict. c. 126, s. 2.)

The law as to granting or withholding relief in cases of non-payment of rent is still the same.

The law, however, as to granting or withholding relief in other cases, including breach of covenant to insure, is specially provided for by the Conveyancing Act, 1881, sect. 14. The Court grants relief in cases of forfeiture caused by non-payment of rent only upon application being made within six calendar months, and upon payment by the tenant of all arrears of rent, interest, and costs. The effect of sect. 14 is practically to give the Court discretion to grant or refuse relief in cases of forfeiture of leases in almost all other cases. (Consult the statute, and Clerke and Brett's Conveyancing Act, 60.)

## POWERS.

173. *Distinguish between a "mere power" and a "power coupled with a trust," giving an example of each.*

*If a mere power be given to A. and his assigns, and a trust to B. and his assigns, who can execute them respectively?*

The distinction between a mere power and a power coupled with a trust is marked and obvious. "Powers," as C. J. Wilmut observed, "are never imperative," they leave the act to be done at the will of the party to whom they are given. An example will be a general power given to a married woman by her marriage settlement to appoint her real estate by will to such persons and uses as she shall think fit. Trusts are always imperative, and are obligatory upon the conscience of the party entrusted. But sometimes trusts and powers are blended: a man may be invested with a trust to be effected by the execution of a power given to him, which is in that case imperative, and if he refuse to execute it, or die without having executed it, equity, on the general rule that the trust is the land, will carry the trust into execution at the expense of the remainderman, and without any regard to the person in whose favour it is to be executed being a mere volunteer, and not a purchaser, creditor, wife or child. This is the case where a power is given by a will to trustees to sell an estate and apply the money upon trusts. The power is in the nature of a trust. The legal estate, until the execution of the power, of course descends to the heir-at-law, and if the power be defeated at law by the death of the person to whom it was given, the legal estate would remain in the heir-at-law for his own benefit; but equity, acting upon the trust, will compel the heir to join in the sale of the estate for the purposes designated by the testator; and on the same principle the same equity is extended to those cases where, although in words a power is given, it never arises, because the testator has omitted to appoint some person to execute it. (Sugden on Powers, 8th ed., 588—9.)

Where a power (*i.e.*, a mere power) is originally authorised to be executed by A. and his assigns, for then, when the power is annexed

to an interest in the donee, it will pass with it to any person who comes to the estate under him, although there are twenty meane assignments, and whether the claimant is an assignee in fact or an assignee in law, as an heir or executor (Sugden on Powers, 8th ed., 180); and consequently any assignee can execute the power either by deed or will, or in any other manner sanctioned by the instrument creating the power (if any), as writing.

If a trust be given to B. and his assigns, inasmuch as a trustee cannot delegate his trust by act *inter vivos* except by appointing new trustees or a new trustee, it follows that no person claiming under B. as assignee by act *inter vivos*, unless he be duly appointed a new trustee, can execute the trusts; and as to persons dying after 31st December, 1881, sect. 30 of 44 & 45 Vict. c. 41, enables the personal representative of a sole surviving trustee to execute the trust, and sect. 38 of the same Act enables the survivors of more than two to execute the trusts. For the former law, see 2 Prid., 11th ed., 140.

174. *What is the difference between a general, and a particular, power of appointment? Give instances of both, and state how the exercise of each power is affected by the rules against perpetuities. Is there any difference in this respect between a particular power created by deed and one created by will?*

By a general power is understood a right to appoint to whomsoever the donee pleases. By a particular power it is meant that the donee is restricted to some objects designated in the deed or will creating the power as to his own children. A general power is instanced by a power given to a tenant for life to appoint the estate after his death to whomsoever he pleases, whilst an instance of a particular power would be a power given to a tenant for life to appoint the estate amongst his children. The principal distinction between them is the manner in which they are affected when exercised by the rule against perpetuities. A general power does not come within that rule any more than any other limitation in any deed, will, or other instrument of conveyance, and consequently in the first instance above stated the tenant for life will *not* be "the life in being" within the rule against perpetuities. On the other hand, a particular power does come within the rule, as the appoint-

ment is construed as if it were contained in the instrument creating the particular power, and consequently in the second instance above stated the tenant for life will be "the life in being" within the rule against perpetuities.

The only distinction in this respect between a particular power created by deed and one created by will is that which arises from the nature of these instruments, viz., in the case of a deed the power created thereby comes into effect at once, whilst in the case of a will the power created thereby has no existence during the testator's lifetime.

175. *State some of the leading principles on which equity will relieve against the defective execution of a power.*

*Will equity relieve in the case of a power exercisable by deed, but executed by will, or conversely?*

The authority to interfere in aid of the defective execution of powers is one of the most useful heads of the jurisdiction of equity in relieving against accident and mistake. The principles on which it acts in these cases have been thus expressed by an eminent authority: "Whenever a man having power over an estate, whether ownership or not, in discharge of moral or natural obligations shows an intention to execute such power, the Court will operate upon the conscience of the heir (or other person benefiting by the default) to make him perfect this intention." (*Per Lord Alvanley, Chapman v. Gibson*, 3 Bro. C. C. 229.) It matters not, generally speaking, what is the nature of the power respecting which the assistance of equity is sought; but powers arising under an Act of Parliament are construed strictly, and, generally speaking, a defect in their execution will not be relieved against, especially where it would be repealing in part the Act to do otherwise. Again, the defects relieved against are generally defects in form, and perhaps the most conspicuous of this last rule is in the case in which a power directed to be exercised by deed only is in fact executed by will. This is regarded as a merely formal variation, and is relieved against. But the converse case is different; a power directed to be exercised by will only cannot effectually be exercised by deed; for a deed being an irrevocable instrument, to allow it to be used instead of a will would be to depart in substance from the intention of the

donor of the power. Relief will, however, only be given in favour of (1) creditors, (2) charities, (3) a wife, (4) a legitimate child, (5) a purchaser, and (6) an *intended* husband. This relief does not extend to the non-execution of a power, which non-execution will only be relieved against where it is a power in the nature of a trust, or the execution has been prevented by fraud. (See H. A. Smith's Equity, 192—197.)

176. *In what cases, and in whose favour, will a defective execution of a power be relieved against, and what is the nature of the relief granted?*

As to the former part of the question, see the preceding answer.

The nature of the relief granted is by acting on the legal estate in whomsoever it is vested by compelling him or her to deal with it in a way which will supply the defectiveness of the attempted appointment. (*Tollet v. Tollet*, 1 Wh. & Tud. L. C. Eq., 4th ed., 227—244; Haynes's Student's Leading Cases, 259; H. A. Smith's Equity, 192—197.)

177. *What is meant by an "illusory" appointment? What was formerly, and is now, the law relating to illusory appointments, and by what statute was the change effected?*

Where a special power of appointment amongst a class of persons was exercised by the donee in such a manner as to give to some member or members of the class a substantial share of the property appointed and to give to the remaining member or members of that class an unsubstantial nominal or illusory share, so as to comply with the form of the power, which was to benefit all the members of the class, but not with the spirit of the power, by really only benefiting some of the members of that class. The old Court of Chancery taking this view of such appointments, declared them void, merely on the ground that they were illusory, whilst the old Courts of common law upheld them. In this state of things 1 Will. IV. c. 46, was passed, and declared every such appointment shall be as valid in equity as at law. This statute is said to have originated the idea of cutting off the heir with a shilling.

The Court of Chancery, though it gave effect to this statute as it was bound to do, would not give to special powers of appointment



their full scope and meaning, and enable the donees to have, as was doubtless originally intended, an absolute discretion as to the objects in whose favour they were to be exercised. That Court accordingly refused to allow the donee of a special power to exercise that power so as to wholly exclude any member or members of the class to be benefited, unless the instrument creating the power specially sanctioned exclusive appointments, as they were termed. Then 37 & 38 Vict. c. 37, was passed, which enacted in effect that whether the instrument creating the power specially sanctioned exclusive appointments or not, the donee of every special power may exercise it so as to exclude one or more members of the class, unless there is a special provision in the instrument creating the power declaring the amount of the share or shares from which no member of the class shall be excluded, or that some one or more member or members of the class shall not be excluded. Thus the heir, whom the old Court of Chancery precluded from being cut off without at least a shilling, the 1 Will. IV. c. 46, enabled to be cut off with a shilling only, and the 37 & 38 Vict. c. 37, enabled him to be cut off with less than a shilling, *i.e.*, nothing at all. This is the present law on the subject.

178. *What is meant by a fraud upon a power ; what constitutes such fraud ; and what is its effect upon the appointment ? Apply the law to the following case :—A power is given by settlement to husband and wife to appoint a fund among their children in such manner as they should think proper, with a gift in default of appointment to the children equally. The donees appointed parts of the fund to the three children of the marriage, and on each appointment the appointee declared that the appointment was in full satisfaction of his share of the settled fund, whether by appointment or in default of appointment. The donees subsequently appointed the residus of the fund to a grandchild.*

Wherever a donee of a *limited* power of appointment attempts to exercise it, either so as to benefit himself or any other person not within the scope of a power of appointment, directly or indirectly, or in fact otherwise than in good faith and sincerity and with an entire and single view to the real purpose and object of the power, it is void, on the ground that such an attempted exercise is a fraud

upon the power. (See *Duke of Portland v. Topham*, L. R. 11 H. L. Cas. 32.) The sinister object of the donee must however be apparent, and not merely rest upon suspicion. (See *Palmer v. Locke*, (App.) 50 L. J. Ch. 113; L. R. 15 Ch. D. 294.) Suppose a father, who has a power of appointment between his children of a sum of Consols, has amongst his six children one who is suffering from an incurable malady, which the father knows will in all human probability cause the child's death within two years, and he appoints all the Consols to that child, in order that he may, on that child's death, obtain the same, if he survives the child, as his child's administrator to pay off his own debts. Such an attempted exercise would be void *ab initio*, and on the application of any one or more of the other children, will be set aside with costs as an attempted fraud upon them. (See *Hinchinbroke v. Seymour*, 1 B. C. C. 395; *Wellesey v. Lord Mornington*, 2 K. & J. 143.) Accordingly, the donee of a special power amongst children is not permitted to negotiate with his children, unless he gives them valuable and adequate consideration, and the children are *sui juris*, competent to understand, and not imposed upon in any way. The appointment, therefore, to the above children, so far as it is an attempted release by the children of the residue, is void as a fraud upon the power. (*Cuninghame v. Anstruther*, L. R. 2 Sc App. 223.) The subsequent appointment to the grandchild is void, as the grandchild is not one of the intended objects of the power. (*Alexander v. Alexander*, 2 Ves. Rep. 640; Tud. L. C. Conv. 330; Haynes's Student's Leading Cases, 256.) The unappointed residue will devolve upon all the children equally, as in default of appointment. The valid appointments will stand, and the declarations will simply be inoperative, whether the fact of obtaining the declarations formed the sole motive for the appointment or not. (*McDonald v. McDonald*, L. R. 2 Sc App. 482; see also *Aleyn v. Belchier*, 1 Eden's Reports 132; 1 Wh. & Tud. L. C. Eq. 415; Haynes's Student's Leading Cases, 263; Watson's Compend. of Equity, vol. 2, 840—5.)

179. *Explain the meaning of a fraud upon the power of appointment, and illustrate by an example. A testator having a power of appointment by will only limited to children, appoints by will a sum to a child, and shortly after the execution of the will, executes a*

*bond in favour of such child to secure payment of the same sum, either out of his own estate or out of funds subject to the power. Is such an appointment valid ?*

The former part of this question is substantially answered in the preceding answer.

In a recent case, where the facts were similar to those stated above, the Court decided that such an appointment is valid. (*Palmer v. Locke*, 50 L. J. Ch. 113 ; L. R. 15 Ch. D. 294. See also *Coffin v. Cooper*, 2 Dr. & S. 365 ; 34 L. J. Ch. 692 ; Sugden on Powers, 8th ed., 527.)

180. *A., having a general power over real estate, duly exercises that power by will in favour of B. He subsequently makes a second will, only disposing of personal property, but revoking all former wills. At A.'s death how will the real estate devolve ?*

There is not, as far as we are aware, any authority directly on this point. It is believed that B. will take under the appointment the real estate if he survives A., but if he predeceases A. there will be a lapse, and the person entitled in default of appointment will take the real estate.

It seems that sect. 27 of 1 Vict. c. 26, which makes a general bequest operate over property in which the testator has a general power of appointment, does not extend to revocations, and, therefore, a will under a power may not be revoked by a later will not under the power merely because the latter contains a general revocatory clause. (Sugden on Powers, 8th ed., 458. See also *Re Davies' Trusts*, 41 L. J. Ch. 97 ; L. R. 13 Eq. 163.)

181. *Real estate stands limited to uses in favour of a married woman for life, with remainder to such uses in favour of her children as she should by will appoint. She by will appoints the estate to her eldest son for life, with remainder to his first and other sons in tail male. What is the effect of such an appointment, and would it have been the same in the case of an appointment by deed ?*

Looked at in the abstract this is an illustration of an excessive execution of a power like that of *Alexander v. Alexander* (Haynes's Student's Leading Cases, 256), and if it were construed strictly the appointment to the first and other sons of her son in tail would be

held void. It will not, however, be construed strictly, but the whole will be read and construed in accordance with that rule of law that where a testator has two objects in view, one general and the other particular, and the particular intent cannot be effected unless at the expense of the general one, the latter shall be carried into effect at the expense of the former. Hence the son will take an estate in tail male. The above-mentioned rule of law does not apply to deeds. It follows, therefore, that the effect of such an appointment by deed, when authorised to be by deed, will not be the same, for in the latter case, there being no rule of law to entitle the deed to be construed otherwise than strictly, the son will take an estate for life only. (Sugden on Powers, 8th ed., 498 *et seq.*)

182. *By settlement a sum of Consols was settled upon A. for life, and after his decease in trust for his children as he should by will appoint, and in default of appointment among his children equally; and a sum of Reduced was also settled upon trust for such persons as A. should by will appoint, and in default of appointment among his children equally. A. by will appointed part of the Consols and part of the Reduced to his son B., to vest at twenty-three. Would the appointment be valid, and to what extent?*

So far as the will purports to affect part of the sum of Consols the appointment is invalid, because the power conferred upon A. by the settlement of the Consols is a *special* one. The limits of perpetuity are in the case of a special power reckoned, not from the time of the exercise of the power, but from the date of its creation. The interests given by the power must for this purpose be regarded as if they had been inserted in the settlement by which the power was created; and if such interests would have been too remote if inserted in the original settlement, they will be too remote when given in exercise of the power. (Williams' Personal Property, 11th ed., 329.)

Thus, in the above case, the limitation, so far as the Consols are purported to be affected, would read as a limitation to one person (A.) for life, and after his death to the son (B.) of such person (A.), to vest at twenty-three. Now the law does not allow property to be limited so as to be incapable of becoming absolutely vested in one owner, if he pleases, for a longer period than a

life or any number of lives in being and a term of twenty-one years, with a further period for gestation where gestation exists. It is clear that if immediately after A. has so exercised his special power in favour of B., when B. is only six months old, A. were to die, the above law or rule of perpetuity would not be observed if such a limitation were allowed to be valid. The law is, that any limitation which *might*, not which does actually, exceed in its operation the above law or rule of perpetuity is void. (*Cadell v. Palmer*, 1 Clark and Finnelley's Reports, 372; Tud. L. C. Conv. 360; Haynes's Student's Leading Cases, 194.)

So far, however, as the will purports to affect part of the sum of Reduced the appointment is valid, because the power conferred upon A. by the settlement of the Reduced is a *general* one.

When a power of appointment is a general power enabling the appointor to make a disposition in favour of any object he may please, the property is evidently not tied up so long as such power exists over it; and neither the reason nor the rule which forbids a perpetuity has any application till some settlement is made in exercise of such a power. In such a case, therefore, the limits of perpetuity commence from the time of the appointment.

Thus, in the above case, so far as the Reduced is concerned, the life or lives in being is, on A.'s death without having revoked his will, B.'s life, and not A.'s, so that it is fully within the above-named rule or law of perpetuity. (See Williams' Personal Property, 10th ed., 314—15; 11th ed., 329; Williams' Real Property, 12th ed., 318.)

183. *A trust fund is settled upon trust for a married woman for life, and on her decease for such person or persons as she should by will appoint, and, in default of appointment, for her next of kin under the statute, as if she had died intestate and unmarried. The woman dies, without having made a will, leaving a husband and children and other relatives. Who, on her death, is entitled to the fund, and what is the question that arises on the point?*

The persons entitled to the fund will be the persons who would have been her next of kin under the Statutes of Distribution if she had died when she did but had never married, *i.e.*, without including her husband or children. (*Clarke v. Colls*, L. R. 9 H. L. Cas. 601.) The question that arises is what construction the ambi-

guous word "unmarried" is to bear. It may mean, without violence of language, either "without ever having been married," *i.e.*, being a spinster, or "not being married at the time of her death," *i.e.*, being a widow. The rule in all such cases of ambiguity is to see by the context which meaning is intended, and if this does not assist the construction, then to construe the word according to its natural or proper English meaning. For a case where the words used were "without ever having been married," see *Emmins v. Bradford*, 49 L. J. Ch. 222; L. R. 13 Ch. D. 493.

184. *Certain trust funds are settled upon trust for a widow for her life, for her separate use, without power of anticipation, and after her death upon trust for such persons as she shall by will or codicil appoint, and, in default of appointment, upon trust for her children equally. Can you suggest any method by which she can by deed secure to one of her children a share in the trust funds, to enable him to raise money upon it, and, if so, what objections to the security, which could be made, would occur to you?*

No indefeasible interest in the trust funds can be given to the son by his mother except by will.

She can release or covenant not to exercise or disclaim her power of appointment in part or altogether. This latter is now settled law (see Sugden on Powers, 8th ed., 88—90), after some doubt existing upon the subject, by decided cases and recently by statute (the Conveyancing Act, 1881, s. 52; Conveyancing Act, 1882, s. 6); but any release by her will not have the operation desired above. It will only bring the trust as on default of appointment into force.

She might execute a covenant or bond in her son's favour to leave him by will, or in default charging her separate estate which is not subject to any restraint against anticipation (if any), and her executors or administrators with the payment of a fixed sum agreed upon between them, which is to be accepted in performance of her covenant if not literally performed. This will not affect the trust funds, but will be useless if the mother has no such separate estate, as is probably the case here.

Another mode suggested is that she should covenant to exercise the power in his favour, and execute a will in exercise of her power. The objection to this is that there will be no remedy against her estate (if any) for damages if she does not perform her covenant by

revoking the will before her death. (See *Palmer v. Locke*, 50 L. J. Ch. 113.) The lender on such a security only trusts to the mother's moral promise to exercise the power by will, and not to revoke it so far as this son's share is concerned.

185. *Certain real and personal estate is devised and bequeathed upon trust for A. for life, with remainder in favour of such person or persons as A. shall by will appoint, and, in default of appointment, to B. absolutely. A. by will appoints to trustees, upon trust for C. absolutely, and appoints the trustees executors. C. dies in A.'s lifetime. Upon whom does the real and personal estate devolve upon A.'s death? State the grounds of your answer.*

So much of the property as falls under the denomination of real estate will devolve upon A.'s residuary devisee or heir-at-law, and so much of the property as falls under the denomination of personal estate will devolve upon A.'s residuary legatee or next of kin, by way of resulting trust. (*In re Van Hagen*, 50 L. J. Ch. 1.)

A. has under the original will a life estate, accompanied with a general power of appointment over the remainder. Such general power is for almost all purposes equivalent to property, and by exercising it in favour of trustees for A. absolutely, A. has shown an intention to exercise it, and to exercise for C.'s benefit, assuming, as A. has done, that C. survives A. Now A. has not failed to exercise his power of appointment, and therefore B. cannot claim the property; and as C. has not survived A., the trustees hold the property upon a trust which has failed, and in accordance with the ordinary rule of law in such cases it is a simple case of a resulting trust; and as respects resulting trusts, the law is the same as to real as to personal property. (*Re Van Hagen, supra.*) It would not have been so if there had been no trustees.

186. *A leasehold house is settled upon trust for A. for life, and after her death for such persons as she should appoint by will, and, in default of appointment, to B. A., by will, appointed the house to her nephew C. absolutely, and gave the residus of her property to D., whom she appointed her executor. C. died in A.'s lifetime. On A.'s death who is entitled to the house?*

D. will be entitled to the house. A. has a power of appointment which is unlimited in its objects. C. having died in A.'s lifetime

his interest therein has lapsed ; and C. is not a child of A. so as to come within the benefit of sect. 33 of the Wills Act (1 Vict. c. 26, s. 33).

By the operation of sect. 27 of 1 Vict. c. 26, "A general devise of real or personal estate is to be construed to include any real or personal estate over which the testator has a general power of appointment, and shall operate as an execution of such power unless a contrary intention shall appear by the will ;" and by the operation of sect. 24 of the same Act, "Every will is, in the absence of a contrary intention being shown, to speak and take effect as if it had been executed immediately before the death of the testator." The leasehold house will pass to D. under the residuary devise. Sect. 27 applies only to *general* powers, but it matters not that a particular form of execution (*i.e.*, by will) is here required. (Sugden on Powers, 8th ed., 306—7.)

*187. How far can a contingent power of appointment, affecting the legal interest in land, be exercised by deed or will before the contingency is determined by the event ; and does it make any difference whether the power is general or limited ? What Acts of Parliament affect the law on this subject ?*

The rules are as follows :—

(1.) A power presently given to a designated person to be exercised upon a contingency can be well executed before the contingency happens.

(2.) But a power which is not to arise until a future or contingent event happens, or until a condition is fulfilled, cannot be exercised until the event happens or the condition is fulfilled ; for until then it has in fact no existence.

(3.) A general power affecting the legal estate in land, given to a contingent person, could not, under the old law, be exercised until the person to exercise it was determined by the event. But this is altered by virtue of 8 & 9 Vict. c. 106, s. 6, which makes contingent interests alienable.

(4.) Before the Wills Act, a power affecting the legal estate, given to a contingent person, was not well exercised by the will of that person before the contingency determined : for the will spoke from its own date, at which time the power was in the nature of a con-



tingent use ; and such uses were only devisable when they were descendible, and this they could not be unless the person who was to take was certain.

(5.) A general power of appointment, whether affecting the legal or equitable estate, may now be well exercised, by deed or will, by a contingent person who in the event proves to be the person actually entitled to exercise the power.

(6.) But a limited power, given to a contingent person, cannot be well exercised, at all events by deed, until the person to exercise it is determined. Whether such a power may be exercised by will, in virtue of the 24th sect. of the Wills Act, which makes a will, with reference to the real and personal property comprised therein, speak from the death of the testator, appears to be doubtful.

(Mozeley's Law Exam. Journal, No. 52, p. 242, citing Farwell on Powers, 118—131.)

---

#### PRACTICE OF THE SUPREME COURT.

188. *Give the outline of the proceedings in an action on the part of plaintiff and defendant ?*

(1.) Writ of summons which unless renewed must be served within a year. Service thereof personally, or substituted service after obtaining an order therefor upon an affidavit showing that personal service cannot be promptly made, unless a solicitor undertakes to appear, and does appear, for the defendant.

(2.) Appearance of defendant. (See hereon Rules S. C., May, 1883.)

(3.) Statement of claim or notice in lieu thereof.

(4.) Statement of defence with or without counterclaim ; or demurrer ; or defence and demurrer combined.

(5.) Discovery, including interrogatories delivered and answered by either party requiring the answers, and order for affidavit of documents made against either party, or in the case of a company being a party, by one of its officers competent to do so, and inspection of property forming the subject matter of the litigation, or any of these, according to circumstances. (See hereon *Lyell v. Kennedy*, 52 L. J. (H. L.) Ch. 385.)

- (6.) Reply by the plaintiff.
- (7.) Rejoinder, if issue is not joined in the reply, without any special pleading.
- (8.) Notice of trial.
- (9.) Notices to produce and admit and inspect respectively.
- (10.) Trial or hearing.
- (11.) Verdict, if there is a jury, but whether there is or not judgment, followed by taxation of costs, and execution, by one or more of the following writs of *fi. fa.*, *elegit*, attachment, sequestration, or by a charging order, stop order, garnishee order, &c., &c., &c.

The above includes the course ordinarily pursued in an action which is fought out by all parties either in the Chancery or Queen's Bench Division.

It may be followed by:—

- (12.) Appeal upon question of law to the Court of Appeal by motion, or by rules *nisi* and absolute for a new trial, and a new trial where there is a misdirection, or, more usually, a verdict against the weight of evidence.

If the action is solely of an administrative nature, in the Chancery Division, the procedure is generally as follows:—

- (1.) Writ with claim indorsed for (say) administration.
- (2.) Summons under Order XV. for an administration decree.
- (3.) Statement of claim raising point of construction arising under a testator's will.
- (4.) Statement of defence.
- (5.) Notice of motion for judgment, at the hearing at which the point of construction is decided at once or adjourned until after further consideration, but in either event any necessary accounts and enquiries may be directed to be taken in chambers, and further consideration is adjourned.
- (6.) Summons to proceed upon order, and proceedings thereunder, ending in chief clerk's certificate, which is filed eight days after it has been signed by the judge, and if no summons has been taken out in the meantime to vary it the action may be set down upon.
- (7.) Further consideration, when any remaining questions are disposed of, and costs ordered to be taxed. If no argument is required, it can be marked as a "short cause." If there are further difficulties to be disposed of, it may be adjourned for a second or even a third further consideration. (See Haynes's Chancery Practice.)

189. *What are the matters specially assigned to the Chancery Division of the High Court by the Judicature Act?*

(1.) All causes and matters pending in the Court of Chancery at the commencement of the Act :

(2.) All causes and matters to be commenced after the commencement of the Act, under any Act of Parliament, by which exclusive jurisdiction in respect of such causes or matters has been given to the Court of Chancery, or to any judges or judge thereof respectively, *except appeals from County Courts* :

(3.) All causes and matters for any of the following purposes:—

(a.) The administration of the estates of deceased persons;

(b.) The dissolution of partnerships or the taking of partnership or other accounts ;

(c.) The redemption or foreclosure of mortgages ;

(d.) The raising of portions, or other charges on land ;

(e.) The sale and distribution of the proceeds of property subject to any lien or charge ;

(f.) The execution of trusts, charitable or private ;

(g.) The rectification, or setting aside, or cancellation of deeds or other written instruments ;

(h.) The specific performance of contracts between vendors and purchasers of real estates, including contracts for leases ;

(i.) The partition or sale of real estates ;

(j.) The wardship of infants and the care of infants' estates.

(Judicature Act, 1873, sect. 34.)

190. *Writ of summons issued by leave of the High Court for service out of its jurisdiction. The defendant objects to the jurisdiction. What steps should he take and when to raise the question? Refer if you can to any case on the subject.*

The defendant should, before the plaintiff has, or he has taken any other step in the action, give notice of motion for an order to discharge the order giving leave to serve the writ out of the jurisdiction, and that all the subsequent proceedings thereunder may be set aside. He should file an affidavit in support setting out the facts briefly, showing that no cause of action has arisen against him within the jurisdiction. (See Rules S. C., May, 1883. Formerly a

*conditional* appearance was first entered. *Fowler v. Barstow*, 51 L. J. Ch. 103; 45 L. T. 603; 30 W. R. 113; see also Daniel's Chancery Forms, 3rd ed., 155, note (a).)

191. *What are the different modes in which an action may be tried, and what are the rights of the parties respectively as to the mode of trial?*

Actions are to be tried and heard either before a judge or judges, or before a judge sitting with assessors, or before a judge and jury, or before an official or special referee, with or without assessors. (Order XXXVI., r. 2.)

Subject to the provisions of the rules, the plaintiff may, with his reply, or at any time after the close of the pleadings, give notice of trial of the action, and thereby specify one of the above modes of trial; and the defendant may, upon giving notice within four days from the time of the service of the notice of trial, or within such extended time as a Court or judge may allow, to the effect that he desires to have the issues of fact tried before a judge and jury, be entitled to have the same so tried. (*Id.*, r. 3.)

And subject to the provisions of the rules, if the plaintiff does not within six weeks after the close of the pleadings, or within such extended time as a Court or judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial, and thereby specify one of the modes mentioned in rule 2; and in such case the plaintiff, on giving notice within the time fixed by rule 3 that he desires to have the issues of fact tried before a judge and jury, will be entitled to have the same so tried. (*Id.*, r. 4.)

The student should, however, bear in mind that the defendant, instead of giving notice of trial, may apply to the Court or judge to dismiss the action for want of prosecution. (*Id.*, r. 4a.)

192. *In the course of legal proceedings it becomes necessary to be prepared with evidence of certain entries in the books of a banker. Can such evidence be obtained or given without production of the books themselves, and, if so, what steps should be taken? And is there any, and, if any, what legislative enactment on the subject?*

Yes, this is provided for by the Bankers' Books Evidence Act, 1879 (42 Vict. c. 11), as follows:—

(1.) Subject to the provisions of this Act, a copy of any entry in a banker's book shall in all legal proceedings be received as *prima facie* evidence of such entry, and of the matters, transactions, and accounts therein recorded.

(2.) A copy of an entry in a banker's book shall not be received in evidence under this Act, unless it be first proved (a) that the book was at the time of the making of the entry one of the ordinary books of the bank, and (b) that the entry was made in the usual and ordinary course of business, and (c) that the book is in the custody or control of the bank.

Such proof may be given by a partner or officer of the bank, and may be given orally or by an affidavit sworn before any commissioner or person authorised to take affidavits.

(3.) A copy of an entry in a banker's book shall not be received in evidence under this Act, unless it be further proved (d) that the copy has been examined with the original entry and found correct.

Such proof shall be given by some person who has examined the copy with the original entry, and may be given either orally or by his affidavit sworn before any commissioner or person authorised to take affidavits.

(4.) A banker or officer of a bank shall not, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book, the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless by order of a judge made for special cause.

(5.) On the application of any party to a legal proceeding, a Court or judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings. An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank *three clear days* before the same is to be obeyed, unless the Court or judge otherwise directs. (Haynes's Student's Statutes, 2nd ed., 307.)

193. *What is the law with reference to a party to an action being at liberty to impeach the credit of his own witness?*

The law on the subject is contained in sect. 22 of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), which enacts as follows:—

A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall in the opinion of the judge prove adverse, contradict him by other evidence, or, by leave of the judge, prove that he has made at other times a statement inconsistent with the present testimony; but before such last-mentioned proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he has made such statements. (Haynes's Student's Statutes, 2nd ed., p. 305.)

194. *Action upon a written contract which contains a clause that in case of dispute the same shall be referred to arbitration. Are there any, and, if any, what steps the defendant can take, and when and under what statute, if any, to obtain a stay of proceedings in the action?*

The defendant can, under the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), s. 11, apply by motion or summons on notice, headed in the action to the Court or judge, after entering an appearance and before delivering his statement of defence, if he can satisfy such Court or judge that (1) no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration according to such agreement; and (2) that the defendant was at the time of bringing of such action and still is ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, for a rule or order staying all proceedings in such action, and the Court or judge may order accordingly upon such terms as to costs and otherwise as to such Court or judge may seem fit. Such rule or order may afterwards be discharged or varied as justice may require. (Haynes's Chancery Practice, 535, 536.) For a case where such an application was made to Mr. Justice Kay by the *plaintiff* in an action for dissolution of partnership, where the articles contained a provision somewhat similar to the above, and refused on the *merits*, see *Weir v. Johnson*, 17 L. J. N. C. 124, 125. For recent cases, see *Re Walker*

and *Brown*, 51 L. J. Q. B. 424; *Young v. Buckett*, 51 L. J. Ch. 504; *Jones v. Wedgwood*, 51 L. J. Ch. 206; *Mercier v. Pepperell*, 51 L. J. Ch. 63; *Smith v. The Parkside Mining Co.*, 50 L. J. Q. B. 144.

195. *Can a defendant in an action of tort charging him with negligence deny such negligence; and at the same time in the alternative pay money into Court in respect thereof? Refer to any case on the subject. If you answer this question in the affirmative, give a form of such alternative defence, and further state what steps you would advise the defendant to take in order to ensure his getting back the money paid into Court should he obtain a verdict.*

Yes, he can both in actions on contracts (*Berdan v. Greenwood*, 47 L. J. Q. B. (App.) 628) and in actions of tort (*Hawksley v. Bradshaw*, 49 L. J. Q. B. 333). It has now, we believe, become a common form of pleading. The defendant will in his defence (1) deny the negligence alleged by the plaintiff in his statement of claim, and (2) in the alternative, plead that if the defendant is guilty of the negligence so alleged he brings into Court (say) forty shillings, which the defendant submits is sufficient to satisfy the plaintiff's claim. If the defendant adopts the usual course in such cases of paying the money into Court before delivering the defence and obtaining a receipt on the copy defence which the defendant forthwith delivers to the plaintiff, the plaintiff will be able to take out of and keep the money paid into Court, although the defendant obtains the verdict. There is no case stating what the defendant ought to do to keep the money in Court. We should apply by summons for leave to pay the money into Court to abide the result of the action before delivering our defence. (See also *Paraire v. Loibl*, 49 L. J. Q. B. 481.)

196. *A defendant in an action, claims to be entitled to contribution or an indemnity over against a person, not a party to the action. What steps should he take to obtain the desired relief? Refer, if you can, to the Judicature Rules on this subject.*

He should take out a summons for leave to issue a notice to that effect, stamped with the seal with which writs of summons are sealed, and serve such summons on the plaintiff. On his obtaining

such leave he should file a copy of such notice with the proper officer and serve it on the same persons and in the same way as if it were a writ of summons. The notice must state the nature and grounds of the claim, and must, unless otherwise ordered by the Court or judge, be served within the time limited for delivering his statement of defence. There must be served with such notice a copy of the statement of claim, or if there be no statement of claim, then a copy of the writ of summons in the action. Such person not a party to the action so served with such notice must enter an appearance to the action within eight days, or obtain leave to appear after such eight days have expired. If he does not appear, he is thereby deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise.

If he does appear the defendant giving the notice may apply to the Court or a judge for directions as to the mode of having the question in the action determined; and the Court or judge upon the hearing of such application may if it shall appear desirable so to do give the person so served liberty to defend the action upon such terms as shall seem just, and may direct such pleadings to be delivered or such amendments in any pleadings to be made and generally may direct such proceedings to be taken and give such directions as to the Court or a judge shall appear proper for having the question most conveniently determined and as to the mode and extent in or to which the person so served shall be bound or made liable by the decision of the question. (Rules of the Supreme Court, Order XVI., rr. 18, 20, 21.)

*197. What is the practice for bringing in a person not a party to the action against whom a defendant claims indemnity in respect of the matter on which he is sued, and what is the effect on the party so brought in?*

The answer to this question is contained in the preceding answer.

*198. State shortly the principal steps in an action by a creditor for the administration of a testator's real and personal estate, where a statement of claim is delivered, but the debt is not contested. How should the writ be indorsed, and to what costs is the plaintiff entitled?*



(1.) Writ of summons. The indorsement thereon will be as follows:—

“The plaintiff’s claim is as a creditor of X. Y. of Whiteacre Farm, Blackacre, in the County of Berks, farmer. deceased, for £125, for money lent to X. Y. during his lifetime, to have the real and personal estate of the said X. Y. administered. The defendant C. D. is sued as the administrator, and the defendant E. F. is sued as the heir-at-law of the said X. Y.”

If the higher scale of charges is not applicable, a certificate of the lower scale being applicable should be engrossed in duplicate, and one copy filed with the writ, and the other part, sealed by the proper officer, should be kept for production when required to pay any Court fees on the lower scale in the subsequent proceedings in the action.

(2.) Statement of claim.

(3.) Statement of defence, if any, is delivered by the defendant or defendants.

(4.) Summons for affidavit of documents by both or either parties or party (if thought necessary).

(5.) Interrogatories by both or either parties or party (if thought necessary).

(6.) Notice of motion for judgment, which must be set down for hearing, and may if necessary be marked as “a short cause” on the certificate of plaintiff’s counsel where no argument on the construction of the will is needed.

(7.) Draw up judgment and take out summons to proceed thereon after having left a certified copy at chambers.

(8.) Proceed at chambers. Advertise for creditors, adjudication on the claims. Take in list of debts as settled. Certificate of chief clerk as to debts. Take in list of assets as settled. Certificate of chief clerk as to assets.

(9.) Give notice of motion for, and proceed with hearing on further consideration, with or without further reference to chambers. Taxation of costs. The plaintiff is entitled to the full costs as between solicitor and client when taxed. (See Haynes’s Chancery Practice.)

199. *State briefly the principal directions which an order for administration of a testator’s real and personal estate at the suit of a beneficiary should in an ordinary case contain.*

*How are the costs of suits to be borne? Has the rule been modified by any recent decision?*

The judgment or order made in an administration action usually directs the following accounts to be taken:—(1.) Of the personal estate of the deceased. (2.) Of his debts. (3.) Of his funeral expenses; and the legacies and annuities bequeathed by his will. And (4.) an inquiry is ordered to be made as to what parts of his personal estate are outstanding or undisposed of. If there is any real estate to be administered, it is further ordered that an inquiry be made as to what real estates the deceased died seised or possessed of, and what (if any) incumbrances affect the same; and such estate is usually directed to be sold with the approbation of the judge. The information necessary to work out directions of this description is ordinarily required to be furnished by the personal and real representatives respectively by affidavits and schedules and exhibits thereto. (Haynes's Chancery Practice, 430.)

Where real and personal estates are being administered by the Court the general costs are borne by the personal estate; but though both estates are being administered by the Court in one action the costs exclusively occasioned by the administration of the real estate must be borne by the real estate. It is the proper course for the judge to apportion the costs between the two estates, and not to leave the apportionment to the taxing master. (*Patching v. Barnett*, 51 L. J. Ch. 74.) In other words, the costs of administration, so far as they have been increased by the administration of real estate, are to be borne by the real estate. (*Re Middleton, Thompson v. Harris*, (App.) 51 L. J. Ch. 273.)

Prior to the last-mentioned decisions it was understood that the whole of the costs were always paid exclusively out of the personal estate.

200. *A tenant for life under a settlement having obtained a renewal to himself of a lease forming part of the settled property, and having died, a judgment in the Chancery Division is pronounced against his personal representatives, directing them to assign the renewed lease to the trustees of the settlement. What other directions would you suggest that the judgment should contain?*

It would be proper, as the estate is to benefit by the lease, that the judgment should contain an inquiry as to the value of the original term, and also the value of the residue, and the portion of the term remaining, thus to arrive at the extent of the benefit the tenant for life had received. There should also be an inquiry as to the amount of the interest on the money paid by the tenant for life in obtaining the renewal, and the interest allowed would be compound interest. (Indermaur's Law Students' Journal, Vol. II., 39, citing Lewin on Trusts, 7th ed., 340, 341.)

201. *Action brought to recover commission. Defendant denies the claim, and claims by way of counterclaim the price of goods sold to plaintiff. The jury find a verdict for the plaintiff on his claim for £100, and for the defendant on his counterclaim for £200, and judgment is entered for the plaintiff for £100 and costs of suit, and for the defendant for £200 with costs of counterclaim. Upon what principle are the costs taxed?*

The plaintiff is entitled to have taxed and paid to him the general costs of the action, and the defendant only the costs incurred in consequence of the counterclaim.

The principle will best appear from the following extract from the judgment of Brett, L.J., in *Baines v. Bromley* (50 L. J. Q. B. 465; 44 L. T. 916): "Here the judgment is in form, not that the defendants have a set-off, but counterclaim only. It is as if the defendants chose to deny the whole of the plaintiff's claim, and to rest on their cross-action. The costs have been taxed, however, as if the plaintiff had not succeeded at all in his action, but only on certain issues, and I think that that was wrong. That alone is sufficient to sustain the appeal. I have a firm opinion that where there is a claim with issues taken on it, and a counterclaim, not a set-off, but in the nature of a cross-action with issues on it, and where the plaintiff succeeds on the claim and the defendant on the counterclaim, the proper principle of taxation, if not otherwise ordered, is to take the claim as if it and its issues were an action, and then to take the counterclaim and its issues as if it were an action, and then to give the allocatur for costs for the balance to the litigant in whose favour the balance turns. In such a case where items are common to both actions the master would divide them. Where the so-

called counterclaim is a set-off there is but one action." For the proper mode of taxation where there is a claim and pure set off, see *Lowe v. Holme*, 52 L. J. Q. B. 270.

202. *Is there any, and, if any, what advantage gained by a plaintiff who has recovered judgment in an action for a sum of money over £50 issuing and putting in force a writ of elegit, instead of a writ of fi. fa., against the goods of the debtor (a trader), with reference to the provisions of the Bankruptcy Act, 1869?*

There is the advantage of the plaintiff obtaining payment of his debt, although the trader-debtor files a liquidation petition or is adjudicated bankrupt, or both; whereas if he issues a writ of *fi. fa.* and he does not obtain actual payment from the sheriff of the amount levied before either or both the above events happen, the sheriff is bound to hand over the proceeds of the execution to the trustee under the bankruptcy proceedings, instead of to the execution creditor, if the sheriff receives notice of such proceedings within fourteen days after the sale of the debtor's goods. (*Re Gourlay, Ex parte Abbott*, 50 L. J. Ch. 80.) This arises in consequence of sect. 87 of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), requiring besides the levy *a sale* of the goods and chattels, and under a writ of elegit there is in fact no sale, the goods and lands (if any) being handed over to the creditor at a valuation set upon them by a jury empanelled before and by the sheriff or his deputy upon the evidence of a valuer. The creditor thereupon becomes a secured creditor within 32 & 33 Vict. c. 71, s. 16, sub-s. 5, which he can enforce by sect. 12 notwithstanding adjudication. (See *Re Watkins, Ex parte Evans*, (App.) 49 L. J. Bkcy. 7; *Turner v. Bridgett*, 51 L. J. Q. B. 374.)

The creditor who issues a writ of elegit does not, however, avoid the doctrine of relation back if the levy is made after an act of bankruptcy has been committed by the debtor beforehand, though unknown to him. (*Ex parte Sulger*, 50 L. J. Ch. 687.)

203. *What are estates held by "statute merchant," "statute staple," and "elegit," and to what extent have such estates been superseded?*

A statute merchant was a bond of record under the hand and seal of the debtor authenticated by the King's seal, which rendered

it of so high a nature that on failure of payment on the day assigned execution might be awarded without any mesne process to summon the debtor, or the trouble or charges of bringing in proof to convict him, and thus, it is presumed, it obtained the name of a "*pocket judgment*." It has fallen into disuse. A statute staple was also a bond of record, but was also acknowledged before the mayor of the staple in the presence of the constables of the staples or one of them; the only seal required for its validity was the seal of the staple, and therefore if the statute be void for any cause, it could not, as in the case of a statute merchant, be proceeded on as a common obligation, and wanting the sanction of the seal of the king, the sheriff after the extent could not deliver the lands to the conusee, but must have seized them into the king's hands; and in order to obtain possession of them the conusee must have sued out a writ of *LIBERATE*, which was a writ out of Chancery reciting the former writ and commanding the sheriff to deliver to the conusee all the lands, tenements and chattels by him taken into the King's hands if the conusee will have them by the extent, and appraisement made thereof until he be satisfied his debt. (Coote on Mortgages, 74.) Both the above have grown obsolete, and have been superseded by the modern form of mortgage, with its express or implied power of sale. Lands taken by virtue of the above were held for an estate by statute merchant and statute staple respectively until the debt was paid. (Wharton's Law Lexicon, 6th ed., 914.)

A writ of *elegit* is one of the writs which may be issued in execution of a judgment, and whereby the whole of the lands as well as the goods of the judgment debtor, except oxen and beasts of the plough, may be taken after an inquiry before a jury as to their ownership. It originated under the statute of Westminster the Second, and until the passing of 1 & 2 Vict. c. 110 only extended to half the debtor's lands. By that statute it extends to the whole of the judgment debtor's lands. When the lands are delivered to the creditor in pursuance of that writ he is technically tenant by *elegit*, but as in the cases of statute merchant and statute staple, he only holds his debtor's lands until payment or tender of his debt, interest and costs, which can be made so long as the debtor is not barred by statute from making such payment or tender. Whilst statute merchant and statute staple have fallen into disuse, writs of *elegit* have become very popular of late in consequence of their

escaping, as mentioned in the preceding answer, the provisions of the Bankruptcy Act, 1869, if the debtor goes into liquidation or becomes bankrupt, except in the case of bankruptcy, when they may be avoided under certain circumstances under the doctrine of relation back.

204. *Explain the words "interlocutory order" as used in the Judicature Acts. Are they confined in their meaning to an order made between writ and final judgment, or do they extend to an order made after judgment? Would they apply to the following case?*

*A creditor recovers judgment in an action and sues out a writ of elegit. The sheriff returns that there are no goods which he can deliver, but the defendant being entitled to an equity of redemption in certain land, the plaintiff applies in the action for an order for the appointment of a receiver. Is he entitled to it, or must he first commence a new action? Quote, as far as you can, the terms of the section of the Act relating to the appointment of a receiver.*

Mr. Wilson, in his third edition of the Judicature Acts and Rules, p. 106, has collected all the cases already decided upon what are "interlocutory" and what are "final" orders under the Judicature Acts and Rules, and which are here repeated. The distinction is important on account of sect. 12 of the Act of 1875; Order LVIII, r. 15; Order XXXVII, r. 3; and Order LVIII, r. 5.

In *White v. Witt* (46 L. J. Ch. 560; L. R. 5 Ch. D. 589), the Court of Appeal decided that the form of the proceeding must be looked at before it can be said whether an order is interlocutory or final. The following orders have been decided to be interlocutory:—

- (1.) An order to vary a chief clerk's certificate.
- (2.) An order on a creditor's claim in an administration action.
- (3.) An order made on an application that a case should be tried with a jury.
- (4.) An order making a rule absolute for a new trial.
- (5.) An order discharging a rule for a new trial.
- (6.) An order empowering the plaintiff to sign judgment on a specially indorsed writ.
- (7.) An order for judgment on an interpleader issue.
- (8.) An order on a motion to vary a special referee's report.
- (9.) A judgment upon a special case stated by an arbitrator who is thereupon to make his award.

(10.) The findings of a judge on issues of fact tried separately from the rest of the action.

But the following are final :—

- (1.) A judgment allowing or overruling a demurrer.
- (2.) An order dismissing an action.
- (3.) A judgment for part of a claim under Order XL., r. 11.

(The authorities for the above statements are collected in Wilson, p. 106.)

An order may or may not be interlocutory if made after judgment. It depends, as above stated, upon the form of the proceeding. An order for the appointment of a receiver under sect. 25, sub-sect. 8, of the Judicature Act, 1873, is by the express words of that section an "interlocutory" order. The plaintiff can in his action, and in the division in which the action then is, obtain the appointment of a receiver by motion in a summary manner, without commencing, as was formerly necessary, a fresh action for that purpose. He should generally register the order appointing the receiver when made as a *lis pendens*. This is termed obtaining "equitable execution." (*Smith v. Cowell*, 50 L. J. (App.) Q. B. 38; L. R. 6 Q. B. D. 75.)

The terms of sect. 25, sub-sect. 8, are as follows :—

"A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim or title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable."

205. *Are there any, and, if any, what means and under what statutes and rules, if any, by which delivery of property (other than land) the subject of an action can be enforced?*

Yes, under the rules of the Supreme Court made under the Judi-

capture Acts, 1873—1881. The delivery of property (other than land or money) the subject of an action can be enforced by any Division of the Court by—

(1.) A writ for delivery of the property, without giving the defendant the option of retaining such chattel upon paying the value assessed, and distraining on the defendant's lands until it is delivered; or if the plaintiff wishes it, he can have its assessed value raised and paid to him out of the defendant's other goods. (Order XL., r. 4; Order XLIX.; Appendix F., Form No. 8.)

(2.) A writ of attachment. (Order XLII., r. 4; Appendix F., Form No. 9.)

(3.) A writ of sequestration. (Order XLII., r. 4; Appendix F. Form No. 10.) (For further information consult Haynes's Chancery Practice, 186 *et seq.*; Daniel's Chancery Forms, 3rd ed., 687, 734, 743, 1375—1392.)

206. *In an action for recovery of land at the suit of a landlord against a tenant, and in which the writ only claims possession, are there any, and, if any, what means by which, on the trial, the plaintiff can obtain a verdict for mesne profits as well as judgment for possession of the land?*

Yes, by virtue of sect. 214 of the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), which in effect provides that, on the trial of an action by a landlord against his tenant the landlord can, *after proof of his right to recover possession* of the whole or any part of the premises mentioned in the statement of claim, go into *evidence of the mesne profits thereof* which shall or might have accrued from the day of the expiration or determination of the tenant's interest in the same, down to the time of the verdict given in the action or to some preceding day to be specially mentioned therein; and the jury shall give their verdict and the landlord shall have judgment accordingly; but this action does not prevent the landlord bringing any action for the mesne profits which shall accrue from the verdict or the day so specified therein down to the day of the delivery of possession of the premises recovered in the former action. This section applies to all actions of ejectment *as between landlord and tenant*. The writ need not contain any claim for mesne profits to recover them under this section. (*Smith v. Tett*, L. R. 9 Exch. Ch. 307; Woodfall's Landlord and Tenant, 11th ed., 745.)



207. *Describe the nature and effect of the writs of certiorari and procedendo respectively, and state the necessary steps to be taken in order to obtain the same.*

The writ of certiorari is issued for the purpose of removing a cause or matter from an inferior Court to the High Court of Justice, and is not granted as of course, though an applicant having a peculiar grievance of his own may be entitled to it *ex debito justitiæ*. A certiorari is directed to the judge or officers of an inferior Court, commanding him or them to return the record of a cause or matter there depending, to the end that more sure and speedy justice may be done between the parties. The right of thus removing a cause or matter exists at common law, but has from time to time been limited to some extent in its applicability by statute.

If the High Court or Court of Appeal should consider that a cause has thus been improperly removed, it may direct the issue of a writ of procedendo commanding the inferior Court to proceed, or the writ of certiorari may be quashed on motion. (Broom's Common Law, 5th ed., 233—4.)

In practice the application for leave to issue either writ is made either by summons in chambers (in vacation) or for, first, a rule *nisi*, and afterwards, on cause being shown, a rule absolute. In the Queen's Bench Division of the High Court leave may be obtained by motion. The application is supported by an affidavit setting out the facts. (See Daniel's Chancery Forms, 3rd ed., 995 *et seq.*)

---

#### PREScription.

208. *What is meant by "prescription," as distinguished from custom, and what were its leading characteristics at common law? When was the Prescription Act passed, and what changes did it make in the law?*

Custom is a local usage not annexed to any person, whereas prescription is a strictly personal right, as that A. and his ancestors, or those whose estate he has, have used time out of mind to have such an advantage or privilege. (Broom's Common Law, 5th ed., 14.) Borough-English is an instance of a custom.

A man acquires the right of pasture on a common in a parish by grant or prescription.

The leading characteristics of the common law in regard to prescription are :—

(1.) This title is always founded on the actual usage of enjoying the thing in question.

(2.) The enjoyment on which a prescription is founded must have been constant and peaceable.

(3.) The length of time of enjoyment must have been from *time immemorial*, or as it is technically termed, *from time whereof the memory of man is not to the contrary*, which period refers to so remote an era as the beginning of the reign of Richard I. (A.D. 1189).

(4.) Every prescription must be certain and reasonable.

(5.) All prescription must be laid either in a man and *those whose estate he hath* in certain lands (as in the case of a prescriptive common of pasture), which is called prescribing in a *que estate*, or it must be in a man *and his ancestors*.

(6.) A prescription in a *que estate* must always be laid in him that is tenant of the fee.

(7.) A prescription cannot lie for a thing which cannot be raised by grant; for the law allows prescription only in the place of the loss of a grant, and therefore every prescription pre-supposes a grant to have existed.

(8.) That which is to arise by matter of record cannot be prescribed for.

(9.) Lastly, a person having a title to a thing by prescription is not to be considered as being himself the purchaser so as to make it descendible to his heirs general according to the ordinary rule of inheritance; but the rule is, that where a man prescribes for any thing (for example, a right of way) in himself and his *ancestors* it will descend only in the blood of that line of ancestors in whom he so prescribes; but if he prescribes for it in a *que estate* it will follow the nature of that estate in which the prescription is laid, and be inheritable in the same manner, whether that were acquired by descent or purchase; for every accessory followeth the nature of its principal.

The Prescription Act was passed in 1832, and is referred to as 2 & 3 Will. IV. c. 71. That Act dispensed (in all the ordinary

cases of prescription) with the necessity of making out an immemorial usage either by presumption or otherwise, and to allow an enjoyment for a certain period to constitute a direct and intrinsic right. (Stephen's Commentaries, 8th ed., vol. 1, 683—691.) The Act provides as follows :—

(1.) No claim, lawfully made, by custom, prescription, or grant, to any right of common or other profit or benefit to be taken and enjoyed from or upon any land of the king, or being parcel of the Duchy of Lancaster, or of the Duchy of Cornwall, or of any ecclesiastical or lay person, or body corporate, except such matters and things as are herein specially provided for, and except tithes, rent, and services, shall, where such right, profit, or benefit have been actually taken and enjoyed by any person claiming right thereto without interruption for *thirty* years, be defeated or destroyed by showing only that such right, profit, or benefit was first taken or enjoyed at any time prior to such period of thirty years, but, nevertheless, such claim may be defeated in any other way by which the same is now liable to be defeated; and when such right, profit, or benefit shall have been so taken and enjoyed for *sixty* years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.

(2.) In claims of rights of way, rights of water, and other easements, the periods are to be *twenty* years and *forty* years. In other respects, this section is similar to sect. 1.

(3.) When the access and use of light to and for any dwelling-house, workshop, or other building, shall have been actually enjoyed therewith for *twenty* years without interruption, the right thereto shall be deemed absolute and indefeasible, any local usage or custom to the contrary notwithstanding, unless it shall appear that the same was enjoyed by some consent or agreement expressly, &c. (as in sect. 1).

(4.) Each of the said respective periods shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question, and no act or other matter shall be deemed to be an interruption within the meaning of this statute, unless the same shall be submitted to or acquiesced in for *one year*

after the party interrupted shall have notice thereof and of the person making or authorising the same to be made.

(5.) In pleadings to actions of trespass and other pleadings, where the party formerly used to allege his claim from time immemorial, the periods mentioned in this Act may be alleged, and if the other party shall intend to rely on any proviso, exception, incapacity, disability, agreement, or other matter hereinbefore mentioned, or in any cause or matter of fact or of law not inconsistent with the simple fact of enjoyment, the same shall be specially alleged and set forth in answer to the allegation of the party claiming, and shall not be received in evidence on any general traverse or denial of such allegation.

(6.) In the several cases mentioned in and provided for by this Act, no presumption shall be allowed or made in favour or support of any claim upon proof of the exercise or enjoyment of the right or matter claimed for any less time than as before mentioned.

(7.) The time during which any person otherwise capable of resisting any claim to any of the matters before mentioned shall be an infant, idiot, *non compos mentis*, *feme covert*, or tenant for life, or during which any action or suit shall have been pending, and which shall have been diligently prosecuted until abated by the death of any party or parties thereto, shall be excluded in the computation of the periods hereinbefore mentioned, except where the right or claim is hereby declared to be absolute and indefeasible.

(8.) Provided that when any land or water upon, over, or from which any such way or other convenient watercourse or use of water shall be enjoyed or derived, shall be held under or by virtue of any term of life, or any term of years exceeding three from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned, during the continuance of such term, shall be excluded in the computation of the said period of forty years in case the claim shall, within three years next after the end or sooner determination of such term, be resisted by any person entitled to any reversion expectant on the determination thereof. (Haynes's Student's Statutes, 2nd ed., 165—167.)

## PRINCIPAL AND AGENT.

209. *Mercantile agents are divided into two classes. What are they, and in what essential particular do they differ?*

They are factors and brokers.

A factor is a substitute in mercantile affairs—an agent employed to sell goods or merchandise consigned or delivered to him by or for his principal for a compensation commonly called factorage or commission. Hence he is often called a commission merchant or consignee, and the goods received by him for sale are called a consignment.

A broker is an agent employed to make bargains and contracts between other persons in matters of trade, commerce, and navigation for a compensation commonly called a brokerage. He is agent for both the contracting parties, but is not entrusted with the custody or possession of goods, and is not authorised to buy or sell them in his own name.

The essential particular in which they differ is that a factor is entrusted with the actual possession and disposal of goods, and has a special property in and a lien on them, whilst a broker is not so entrusted, and consequently has no such property or lien. Again, a factor can buy or sell in his own name, which a broker cannot do. Neither, however, can delegate his authority unless by usage of trade or the assent of his principal. (Wharton's Law Lexicon, 6th ed., 136, 372.)

210. *A. sells to B., as broker for C., six casks of oil; terms, cash in fourteen days; C. takes delivery. Before the time for payment arrives C. pays B. the invoice price of the oil. B. appropriates the money to his own use and becomes bankrupt. What is A.'s remedy as an unpaid seller for the price of the oil, and against whom should he proceed, and why? State what is the broad principle of law as to which of two innocent persons must suffer by reason of the acts of a third.*

A.'s remedy is against C. for the price of the oil unpaid. He cannot have anything to do with the payment by C. to B., who is his own broker and agent.

The broad principle of law referred to is that where under the circumstances of a case it is apparent that one of two innocent persons must suffer by reason of the acts of a third person for whose acts neither of the innocent parties is directly responsible, that one of the innocent parties must suffer who put it in the power of the third person to do the wrongful act complained of, as by employing him.

211. *A. is a cotton broker at Liverpool; so also is B. A. buys cotton of B.; both are acting in the transaction for undisclosed principals. By a mistake made by B.'s clerk in adding up the weight list, A. pays B. £300 too much, and the mistake is not discovered till several months afterwards. In the meantime B. has allowed the whole of the money received by him from A. to be settled in account with his (B.'s) principals, to whom he had made advances, and at the close of the transactions between them a large balance was owing from them to B. Has A. any, and if any, what remedy, and against whom, for recovery of the money so paid in mistake? Give reasons for your answer.*

A. is entitled to recover back the over-payment made in mistake from B., as this case does not come within the rule by which an agent who has *bonâ fide* paid over money to his principal is relieved from liability. (*Newall v. Tomlinson*, L. R. 6 C. P. 405. For an illustration of the rule referred to, see *Holland v. Russell*, 4 B. & S. 14; 32 L. J. Q. B. 297.) It must be remembered in connection with this case that brokers in the cotton trade by custom deal with one another as principals.

212. *Your client, a wine merchant, has supplied wine to a club upon the order of the house steward, and cannot obtain payment without resorting to legal proceedings. Against what person or persons would you advise him to proceed, and why? and, supposing the debt to be disputed, what steps would you take to prove your client's case? (For the purpose of this question it may be assumed that the house steward had a general authority to order goods for the use of the club.)*

The law on this case is the same as that which governs the ordinary relation of principal and agent. Assuming that the club is

not what is called a proprietor's club, the persons immediately liable will be those members of the committee of the club who authorised the steward to contract the plaintiff's debt: directly by giving the particular order which gave rise to the plaintiff's debt, or indirectly by giving the steward a general authority to order goods (including wines) for the use of the club, which has not been revoked. The plaintiff should join those members of the committee who were present at the particular meeting when the steward received his direct or indirect authority, as above stated, and who joined in passing the resolution (if any) on the subject.

At the hearing the plaintiff should be prepared to prove—

(a.) The steward's direct authority to pledge the defendant's credit, or his indirect authority to do so, and, if the latter, that the steward's order to the plaintiff was within the scope of his authority, and in either case that the authority was not revoked.

(b.) The delivery of the wines at the premises used by the club in pursuance of the steward's order and on the faith of the defendants' credit.

(c.) That the prices charged are fair and reasonable.

*213. B., a broker, was employed by C. to speculate for him upon the Stock Exchange. To the knowledge of B., C. did not intend to accept the stock bought for him or to deliver stock sold for him, but expected B. would so arrange matters that nothing but differences should be payable by him. B. knew that unless he could arrange matters for C. as the latter expected, C. would be unable to meet any engagements B. might enter into for him. B. having entered into contracts on behalf of C., became himself personally liable. Does or does not the above employment by C. of B. constitute a legal contract between them so as to entitle B. to sue C. for an indemnity and commission as a broker? Give reasons for your answers, referring therein to any statute concerning gaming or wagering.*

In the above case the facts do not show a contract between B. and C. as principals to buy and sell and only to pay differences, for that would be a gaming and wagering contract within 8 & 9 Vict. c. 109, s. 18, which in effect declares all contracts by way of gaming and wagering null and void, and renders actions for the recovery of money won on any wager unsustainable. The reason

that B. and C., who, if they had contracted as principals, could not sue upon that contract would be because it was of the essence of their contract that in no event should more than the difference become payable, and the buying and selling, though apparently real, would be a farce when it is considered what object B. and C. would have in such a supposed case.

In the case stated in the question, however, the facts are very different, for the supposed contract between B. and C. is a legal one, and the relation between C. and B. is that of principal and agent only for all purposes. An implied obligation to indemnify is created whenever one person employs another to do a lawful act which exposes him to liability, and that other, has accepted the employment and incurred the liability. Therefore in this case, if it is shown that the contract between C. and B. is not illegal, B. can sue C. for an indemnity and for his commission in respect of his labour as a broker on C.'s behalf.

Now the only grounds upon which such a contract could be illegal are two, and they are: (1) As contravening 8 & 9 Vict. c. 109, s. 18; (2) as contravening public policy. Contracts made by way of gaming and wagering, though not capable of being enforced owing to 8 & 9 Vict. c. 109, s. 18, it must be remembered are *not* illegal (see *Fitch v. Jones*, 5 E. & B. 233; 24 L. J. Q. B. 293); and therefore the transactions between C. and B. are not illegal, for if they are, the illegality of the transactions in which C. and B. were engaged would have tainted as between themselves whatever B. had done in furtherance of their illegal designs, and would have precluded him from claiming in a court of law any indemnity or commission in respect of the liabilities he had incurred. Again, money paid in discharge of a bet is a good consideration for a bill of exchange (*Oulds v. Harrison*, 10 Exch. Rep. 572; 24 L. J. Exch. 66); and if money be so paid by a plaintiff at the request of a defendant it can be recovered by action against him. (*Knight v. Combers*, 15 Com. B. Rep. 562; 24 L. J. C. P. 121.) When we recollect this, and the fact that the contracts which B. was to enter into with strangers were to be real contracts, and that upon a mistake being made by B.—*e.g.*, in purchasing worthless stock—C. would be bound to take that stock from him, it is clear that the contract between B. and C. is not void either by statute or common law. However reprehensible such a contract may appear from a



moral point of view, it is a legal one. If it had amounted to what is called a time bargain it would be a different matter. (*Thacker v. Hardy*, 48 L. J. Q. B. 289; L. R. 4 Q. B. D. 685.)

214. *J. Smith and Son signed a contract for the sale of wheat in the following form:—*

*Sold to A. B., London, about 200 quarters of wheat (as agents for C. D., of Dantzic).*

*(Signed) J. Smith and Son.*

*The bought note signed by A. B. was in a similar form. The wheat was delivered, but was not equal to sample. Can the buyer maintain an action against J. Smith and Son for non-delivery of the wheat according to sample, charging them as principals? Give reasons for your answer, and refer, if you can, to any leading case on the subject.*

No, the buyer cannot maintain such an action against J. Smith and Son charging them as principals, because in the contract J. Smith and Son expressly show that they are not contracting as principals but "as agents for C. D., of Dantzic." The question whether an agent, resident in England, who contracts for a foreign principal resident abroad, is personally liable on the contract, is in all cases one of fact and not of law, to be determined by reference to the contract and the surrounding circumstances. (*Green v. Kopke*, 25 L. J. C. P. 297; 18 C. B. R. 549.) But in such cases there is a presumption, where the contract and surrounding circumstances do not rebut it, that credit is given to the agent resident in England and not to the foreign principal. (See the remarks of Lord Tenterden in the leading case of *Thompson v. Davenport*, 9 B. & C. 78; 2 Sm. L. C. 364.)

---

#### PRINCIPAL AND SURETY.

215. *A. and B. enter into a bond (A. as principal, B. as surety) for payment to C. of £1000 in four instalments of £250 each. Upon the second instalment becoming due C. accepts A.'s promissory note for payment thereof in six months. Is B.'s liability as surety in any way affected thereby, and to what extent?*

We are of opinion that B.'s liability to pay the second instalment is discharged by C. accepting A.'s promissory note for payment in

six months without B.'s consent. B.'s liability to pay the other instalments as they become due, should A. make default in so doing, is not affected thereby, as this contract is severable, and the giving the time to the principal in respect of one payment does not discharge the surety as to the rest. (*The Croydon Commercial Gas and Coke Co. v. Dickinson*, (App.) 46 L. J. C. P. 157; L. R. C. P. D. 46.)

216. *A. consents to become surety for B. only upon terms of having security from B. C. afterwards becomes surety for the same debt, but makes no conditions, and in fact is not informed of the security given to A. Has C. any claim against A. in respect of his security?*

Assuming that A. did receive some security from B., C., who is a co-surety for B., though subsequent in date to A., is entitled to participate in the benefit of A.'s security upon being called upon to pay as surety; or, in other words, C. is entitled to make A. bring the security he received from B. into hotchpot, in order that it may be realised and distributed between himself and A., equally or proportionately as the case may be, and this though C. imposed no conditions or was ignorant of A.'s existence, let alone his having become surety for B. and having received the security. The principle involved is that sureties who have paid the debt for the payment of which they are sureties are not only entitled to contribution from the other sureties, but also to the benefit of any security which any of them may have taken from the principal debtor by way of indemnity, unless at least there was originally a contract for the special indemnity to one of the number. (See *Dering v. Earl of Winchelsea*, 1 Wh. & Tud. L. C. Eq. 106; Haynes's Student's Leading Cases, 265. And for a similar recent case to that stated in the question, see *Steel v. Dixon*, 50 L. J. Ch. 591; L. R. 17 Ch. D. 825; and H. A. Smith's Equity, 329, 330.)

217. *A. borrows £100 from B., and gives him a joint and several promissory note of himself and one C., as surety payable on demand. A. afterwards borrows a further sum of money, say £200, from B., and without the knowledge or consent of C. gives B. a bill of sale upon his household goods as further security for the £100, and also*

*as security for the further advance of £200. The bill of sale recites the promissory note of A. and C. Will the taking of such bill of sale from A. release C.? Give reasons for your answer.*

No; because although by the taking by a creditor of a second security in satisfaction of the first the surety is discharged, the mere taking of an additional security not in lieu of the former one, as in this case, has no such effect. (H. A. Smith's Principles of Equity, 324; *Gordon v. Calvert*, 4 Russ. 581; *Boaler v. Mayor*, 19 C. B. N. S. 76.)

---

### REGISTRATION OF TITLE.

218. *What statutes have been passed during the present reign with a view to the registration of the title to land? How far are such statutes respectively still in force? And what are the distinctive features of the scheme introduced by the last of such statutes?*

The Land Registry Act of 1862, and the Land Transfer Act, 1875 (38 & 39 Vict. c. 87).

The latter Act superseded the former.

The distinctive features of the scheme introduced by the latter of such statutes are:—

- (1.) It is voluntary.
- (2.) If a title is once registered under that Act, it is thereupon exempt from being registered in the local registries of Middlesex or York, though the subject-matter is situate within either of those counties.
- (3.) It enables an owner of property to obtain an absolute title, qualified title, or a possessory title to freehold or leasehold lands registered under it.

Another Act (which is still in force) may be mentioned bearing indirectly on this subject, namely, "An Act for obtaining a Declaration of Title" (25 & 26 Vict. c. 67). This Act empowers persons claiming to be entitled to land in possession for an estate in fee simple, or claiming power to dispose of such an estate, to apply to the (now) High Court of Justice, Chancery Division, by petition in

a summary way, for a declaration of title. The title is then investigated by the Court; and if the Court shall be satisfied that such a title is shown as it would have compelled an unwilling purchaser to accept, an order is made establishing the title, subject, however, to appeal as mentioned in the Act. (Williams's Real Property, 11th ed., 458.)

---

### RELEASE.

219. *What is a release, and in what several methods may a release enure? Explain the operation of each method.*

A release is a common law conveyance. It operates or enures in five modes:—

(a.) By passing an estate (*mitter l'etat*), as where a joint tenant or coparcener conveys his estate to his co-joint tenant or coparcener. In consequence of the privity between such parties, a fee-simple will pass without any words of limitation. Tenants in common, however, cannot thus release to one another, since they have distinct interests in the property.

(b.) By transferring a right (*mitter le droit*), as in the case of a disseisee discharging his right to a disseisor, his heir, or grantee. Words of limitation are not necessary, since the subject of transfer is a simple right, which once discharged is for ever extinguished, and not an estate, which may be qualified or restricted.

The difference between this and the previous mode is that the former passes an estate, where a privity exists between the parties; this passes only a right, in the absence of privity.

(c.) By extinguishment, as the lord releasing his seignorial rights to his tenant, or a life tenant having conveyed a greater estate than he owns, the expectant releasing his right to the tenant's grantee. A release of all demands extinguishes all actions and titles, and is the amplest discharge that can be given.

(d.) By enlarging a particular estate into an estate commensurate with that of the person releasing; but a privity of estate must at the time exist between the releasor and the releasee, who must have an estate actually vested in him susceptible of enlargement.

(e.) By entry and feoffment, as a disseisee releasing to one or two disseisors, who then becomes so solely seised as if the disseisee had entered upon the property, put an end to the disseisin, and then enfeoffed such disseisor. (Wharton's Law Lexicon, 6th ed., 820.)

### REMAINDERS.

220. *What were the rules of the common law as to the creation and failure of contingent remainders, and what change was effected by the Act 40 & 41 Vict. c. 33? Lands are granted to use of A. for life, remainder to right heirs of B. B. dies in A.'s lifetime, leaving two sons, the eldest of whom also dies in A.'s lifetime. At what period did the remainder vest?*

The common law rules as to the creation and failure of contingent remainders are:—

(1.) The seisin or feudal possession must never be without an owner; and this rule is sometimes expressed as follows, that every contingent remainder of an estate of freehold must have a particular estate of freehold to support it.

As a corollary to the rule above laid down arises another proposition frequently laid down as a distinct rule, namely, that every contingent remainder must vest or become an actual estate during the continuance of the particular estate which supports it, or *eo instanti* that such particular estate determines; otherwise such contingent remainder will fail altogether *as a contingent remainder*, though it may still become an actual estate as an executory interest under the provisions of 40 & 41 Vict. c. 33.

It may also be noted that a contingent remainder cannot be made to vest on any event which is illegal or *contra bonos mores*.

(2.) An estate cannot be given to an unborn person for life, *followed by any estate to any child of such unborn person*, for in such a case the estate given to the child of the unborn person is void. (Williams's Real Property, 11th ed., 267—272.)

As to the change effected by 40 & 41 Vict. c. 33, the illustration given by Mr. Joshua Williams, in the 12th and 13th editions of his book on Real Property, shows the alteration very clearly. The limita-

tions in this question will, however, answer the same purpose. There an estate for life is given to A, and a contingent remainder in fee is given to the right heirs of B. In the above case the contingent remainder became a vested remainder on the death of B., for it could not vest before on account of the maxim, *Nemo est hæres viventis*. The eldest son will thereupon take the fee simple, subject only to A.'s life interest. This fee simple he may then dispose of by deed or will, or, of the beneficial interest only, by contract. If the eldest son, however, dies in A.'s lifetime a bachelor and intestate, and without any other relation except his younger brother, and without having disposed of his estate in his lifetime, his younger brother will take the fee simple subject to A.'s life interest.

Now if A. dies before B., the limitation of the fee simple will fail as a contingent remainder for *nemo est hæres viventis*; and before the coming into operation of 40 & 41 Vict. c. 33, it would have failed altogether, because there was no way of supporting it except as a contingent remainder. It could not take effect as an executory interest, for the prior estate for life precluded it from doing so, as it will be remembered an executory interest, unlike a contingent remainder, requires no particular estate of freehold to support it, but when it arises, it arises of its own inherent strength, and often puts an end to any prior estate until then in existence and never waits for the determination of any such prior estate, like a contingent remainder. The statute 40 & 41 Vict. c. 33, prevents the existence of any prior estate of freehold from affecting the validity of the limitation of the fee simple as an executory interest. Accordingly, though B. should survive A., the limitation to B.'s heirs would take effect as an executory interest. (See Williams's Real Property, 267, 268, 271.)

The Statute 40 & 41 Vict. c. 33, enacts as follows:—

(1.) Every contingent remainder created by any instrument executed after the passing of this Act, or by any will or codicil revived or republished by any will or codicil executed after that date, in tenements or hereditaments of any tenure, which would have been valid as a springing or shifting use, or executory devise, or other limitation, had it not had a sufficient estate to support it as a contingent remainder, shall, in the event of the particular estate determining before the contingent remainder vests, be capable of taking effect as if the contingent remainder had originally been created as

a springing or shifting use, or executory devise, or other executory limitation. (Haynes's Student's Statutes, 2nd ed., p. 176.)

221. *Devise of lands to trustees for a term of seven years upon certain trusts and subject thereto to trustees until testator's grandson John should attain twenty-one, and then to the use of John and his heirs for ever. Testator died leaving a grandson, son of an eldest son, and two grandsons, John and Thomas, sons of a younger son. John survived testator but died under twenty-one. Who, on John's death, is entitled to the lands? Give the grounds of your answer, and cite any case on the point.*

This question is apparently a difficult one to understand. To make it clearer we will re-draw it. A father has two sons; the elder marries and dies before his father, leaving one son named Frederick; the younger also marries and dies before his father, leaving two sons, Albert and Ambrose. Frederick and Albert and Ambrose are all grandsons of the father. When the father died it was found he had left a holograph will imperfectly drawn, whereby he had devised his freeholds to trustees for a term of seven years upon trust out of the annual profits to pay the testator's debts, funeral and testamentary expenses, and subject thereto he devised the freeholds to the same trustees until his grandson Albert should attain the age of twenty-one years upon trust out of the annual profits to pay such of the testator's debts, funeral and testamentary expenses as then remained unpaid, and to invest and accumulate the balance in hand, if any, and upon the grandson Albert attaining twenty-one he devised the freeholds to Ambrose and his heirs for ever. Now, supposing Ambrose to survive the testator but three years and then to have died when only nine years old, who will be entitled to the freehold lands?

Now, suppose Ambrose's brother and heir-at-law (Albert) enters into possession, claiming his right to do so, not as heir-at-law of his grandfather, but as heir-at-law of his brother Ambrose, and contending that on the grandfather's death the freeholds vested in Ambrose, and as Ambrose died under age, and therefore intestate, he Albert is entitled to the lands. And suppose, further, that the other grandson Frederick and heir-at-law of the grandfather tries to

get possession, and brings an action to recover the possession against Albert, claiming his right to do so because Ambrose took nothing (he says) under the will, as the freeholds never were intended to vest in him until he had attained twenty-one, and that his title, and therefore Albert's title, has failed with Ambrose's decease. This is exactly what happened in *Boraston's case* (Hil. 29 Eliz. in B. R. Rot. 790, between Hynde and Ambrye; Tudor's Leading Cases on Real Property, 809.) The Court there decided that the will amounted to nothing more than a devise of freehold land to trustees until the grandson attained twenty-one upon trust to pay the debts, with remainder to the grandson in fee, and held that the grandson's estate was a vested remainder, and accordingly that Albert was entitled to keep the freeholds, and Frederick's action must be dismissed with costs.

By way of hypothesis we would suggest that the testator so drew his will because he knew it would probably take seven years' profits to pay his debts, &c., whether his son was of age or not, and if his son was not of age at the end of that time he meant the trustees to go on managing the estate until he did come of age, and to pay any outstanding debts out of the proceeds.

Briefly stated, the answer to the question is, that Thomas is entitled to the lands as heir-at-law of his brother John, son of the younger son of testator, and not the son of the elder son, because the remainder is a vested and not a contingent one.

*222. Define and give examples of a conditional limitation and a contingent remainder respectively; and state in what important respect they formerly differed.*

A conditional limitation is a limitation which takes effect on the happening of an event during the continuance of the particular estate. On the other hand, a contingent remainder is a remainder which is limited, to become vested upon the happening of an uncertain event, or the birth of an uncertain person, and never puts an end to the particular estate, like a conditional limitation or an executory interest does. To illustrate this: a limitation to A. for his life, if he shall so long continue single, and then to B. in fee. B.'s limitation is a contingent remainder, for whether A.'s life estate expired by his death or marriage, the estate is considered in



law to terminate equally at the period fixed for its ending by the original limitation. But if the limitation were to A. for life, with a proviso that if he married his life estate should cease, the case would be different, the event upon which A.'s estate was to cease being extrinsic, separate, distinct, and collateral to the original limitation, and therefore making no part of it. The limitation over in the latter case is a conditional limitation.

Formerly contingent remainders were liable to be destroyed by the determination of the particular estate during its continuance by its merger, forfeiture, or surrender, and accordingly trustees were appointed to preserve them from this until trustees were dispensed with by the provision of 8 & 9 Vict. c. 106, s. 8. Another Act, *i.e.*, 40 & 41 Vict. c. 33 (see answer to question 220), has enabled them to take effect as executory interests if they can legally be construed as such, without regarding the fact of a particular estate having been created, provided they fail as contingent remainders. Thus they are now practically indestructible, except from natural causes, though not formerly so. Conditional limitations were always indestructible. Contingent remainders have two special rules for their creation, whilst in the case of conditional limitation there is only the rule against perpetuities to be guarded against in their creation. (Wharton's Law Lexicon, 6th ed., 223.)

---

#### REVERSIONARY INTERESTS.

223. *State the principle on which Courts of Equity have generally acted in setting aside a sale of a reversion, and the circumstances necessary to ground a claim for relief. How far is the action of the Court modified by the Act 31 Vict. c. 4?*

On the principle that equity will not permit any undue advantage to be taken of those who are placed in necessitous circumstances.

Previously to the statute (31 Vict. c. 4) fraud was in these cases commonly presumed from inadequacy of consideration; and such transactions were frequently set aside on this ground without proof of any other ingredients of fraud, such as misrepresentation, undue

influence, &c. And the fact that the expectant was of mature age, or well understood the nature and extent of the transaction, was immaterial. From the fact of a person selling such an interest, the Court presumed that he was under pecuniary pressure; and it was not incumbent on him to prove that it was so. The onus was on the purchaser to show that the transaction was just and reasonable. By the Sales of Reversions Act (31 Vict. c. 4), however, it is enacted that "no purchase made *bonâ fide*, and without fraud or unfair dealing, of any reversionary interest in real or personal estate, shall hereafter be opened or set aside merely on the ground of undervalue." This Act has not affected the jurisdiction of equity in cases of unconscious purchases of reversions. Lord Hatherly said (in *Tyler v. Yates*, L.R. 6 Ch. 665): "The Legislature has not repealed the doctrines of this Court by which protection is thrown around unwary young men in the hands of unscrupulous persons ready to take advantage of their necessities. I conceive the reason why the law as to sales of reversions was altered to be that the doctrines of this Court had been carried to an extravagant length on that subject." The effect of the statute seems to be that in future the inadequacy of the consideration must be so gross as to amount to evidence of fraud; but it has been held that the burden of proof is still on the purchaser, the circumstances of the case still rendering the Court more suspicious respecting such bargains than in the case of a sale of an interest in possession. (H. A. Smith's Equity, 145—147.)

224. *Give the substance of the enactment of 31 Vict. c. 4, as to sales of reversions, and state your opinion how far, if at all, this enactment has altered the law with reference to unconscionable bargains as affecting such interests.*

The answer to this question will be found to be contained in the preceding answer.

225. *What alteration was effected in the law as to sales of reversions by the Act of 31 Vict. c. 4? If relief is given, what terms are imposed upon the parties?*

As to the former part of the question, see answer to question 223. Equity proceeds on the maxim that "He who seeks equity must

do equity," and only grants relief on the terms of the plaintiff paying the sum actually advanced, with interest, and any sums reasonably expended by the defendant in improvements, and of proper costs. Only simple interest at 5 per cent. is allowed, and a defendant will disentitle himself to costs by any improper conduct such as refusal to accept a full sum in discharge before action brought. (H. A. Smith's Equity, 148, 149.)

---

### SATISFACTION.

226. *Define ademption, satisfaction, and performance (under a will or in case of intestacy), distinguishing carefully between them, and illustrating each by an example.*

Satisfaction may be defined to be the making of a donation with the express or implied intention that it shall be taken as an extinguishment of some claim which the donee has upon the donor. (Sm. Man. Eq., 12th ed., 414; see *Ex parte Pye*, 2 Wh. & Tud. L. C. Eq., 338; Haynes's Student's L. C., 280.) Where, for instance, a parent on his son's marriage, and in the marriage settlement, covenants to provide in an unlimited time a sum of £3000, and to invest it in Consols in the name of the trustees of the settlement, and the parent subsequently dies without having performed the covenant, but leaves the son a sum of £6000 by will, the legacy will be deemed a satisfaction of the son's interest in the performance of the above-mentioned covenant. Where a parent leaves his child £10,000 by will, and subsequently during his lifetime advances that child £20,000, and then the parent dies without having altered his will, the £20,000 is deemed a satisfaction of the £10,000, or more strictly, the legacy is gone or adeemed. Satisfaction arises in three cases:—(1) Debts by legacies; (2) legacies by legacies; and (3) portions by legacies, and *vice versâ*. Ademption is another name for satisfaction under certain circumstances, the term being limited to cases of satisfaction of one portion by another, where the first portion is limited under a will or other revocable instrument. Satisfaction as technically understood does not arise under an intestacy. Performance never

arises under any will, but only in cases where a person has covenanted to settle or leave property to another and has not done so, but has subsequently done some other act that is capable of being applied towards a performance of his covenant; the presumption is that he did that other act with the intention of thereby practically performing the covenant. It does arise in cases of intestacy where the covenant was like that in *Blandy v. Widmore*, 2 Wh. & Tud. L. C. Eq. 391; Haynes's Student's L. C. 255, where a husband covenanted with his wife's trustees in their marriage settlement that his executors should within three calendar months after his decease pay to his wife £620 if she should survive him. The husband died intestate and without issue, whereupon his widow became entitled to a moiety of his personal estate, which was much more than £620. That case decided that she must take her share in the intestacy as a complete performance of the covenant, upon the principle that "equity imputes an intention to fulfil an obligation." See also *Wilcocks v. Wilcocks*, 2 Wh. & Tud. L. C. Eq. 389; Haynes's Student's L. C. 254, and *Lechmere v. Carlisle*, 3 P. Wms. 211; Snell's Equity, 5th ed., 233.

The term "ademption" is also used in the case of a specific legacy if the testator should part with the subject matter thereof; e.g., if A. by his will should bequeath his gold watch to B., and should afterwards give it to C. or sell it to D.

227. *Explain the doctrine of satisfaction in reference to testamentary dispositions, stating any circumstances essential to its operation.*

The answer to this question will be found to be contained in the preceding answer.

---

### SEPARATION DEEDS.

228. *Give an outline of the usual clauses contained in a deed of separation.*

Date; parties (*i.e.*, husband, wife, and one trustee); recitals.

First testatum; covenants by the husband (1) that his wife may

live separate; (2) that he will not molest her; (3) to pay an annuity to the trustee for wife during joint lives, if separation so long continue, with a proviso that such annuity shall cease on dissolution of marriage by competent Court; (4) that the wife may dispose of other property as if the husband were dead, and if wife die in his lifetime without making any such disposition, her property shall devolve as if the husband were dead; and (5) for further assurance.

Second testatum:—

Covenants by the trustee (1) to indemnify husband against the debts of his wife; and (2) that the wife shall not commence any action for compelling her husband to support her or to live with her.

Then follows, if there are any children, an agreement as to their custody and maintenance.

Testimonium.

(2 *Prideaux*, 11th ed., 738.)

It will be a question whether 45 & 46 Vict. c. 75, s. 1, ss. (2), has not now rendered the trustee an unnecessary party.

229. *Husband and wife separate by mutual consent. Trustees for the wife are appointed, and a deed of separation executed. The deed provides for the payment of an annuity to the wife, but annuity to cease, and trusts of the deed to become void, in case of the happening of any one of the following events:—(1) Wife not remaining chaste; (2) wife annoying husband; (3) wife receiving pecuniary help from others; (4) husband and wife becoming reconciled, and living together again. The husband afterwards becomes bankrupt, and no one of the above events has happened. What are the rights of the wife's trustees as to proving on the husband's estate in respect of the annuity, and what steps should they take?*

The wife's trustees have a right to prove against the bankrupt's estate for the value of the annuity if the husband had remained solvent, notwithstanding the conditions upon which it is made to cease, for it is a claim capable of valuation. (*Ex parte Blackmore, Re Blackmore*, 46 L. J. Bkcy. 118; L. R. 5 Ch. D. 372; *Ex parte Naden, Re Wood*, 43 L. J. Bkcy. 105; L. R. 9 Ch. 670; *Baldwin's Bankruptcy*, 148.) The trustees can prove in the ordinary way, putting in their own estimate of the value of the above annuity, payable by a solvent man, with the above qualifications attached thereto, or make a special form of proof, setting out the fullest

particulars respecting the annuity, and state at the foot that they are unable to value it. In the former case, the trustee may accept the proof without modification, or may, in his discretion, put his own estimate on the value of the annuity, and in the latter case the trustee can put a value on it. If they are not satisfied they can appeal to the Court within fourteen days. (See rule 74, and *Ex parte Bishop, Re Tonnies*, 42 L. J. Bkcy. 107.)

As to the effect of separation deeds as a complete condonation of conjugal offences, see the recent cases of *Gaudy v. Gaudy*, 51 L. J. P. D. & A. 41, and *Rose v. Rose*, 52 L. J. P. D. & A. 25.

---

#### SETTLED ESTATES.

230. *Give a brief outline of the proceedings to effect a sale under the Leases and Sales of Settled Estates Act of an estate, the tenant for life of which is a married woman restrained from anticipation.*

The first step in an application under the Act is to prepare a petition entitled in the matter of the estate settled by the settlor and referring to the instrument of settlement, and mentioning the parish or place or county in which the lands and messuages to be sold are situate, and in the matter of the Settled Estates Act, 1877, and to present the same to the Chancery Division of the High Court of Justice.

In this case the married woman will be the proper person to be made the petitioner. The petition must contain a detailed description of the property to be sold, besides the names, address, and description of the petitioner, and an address for service within three miles from the site of Temple Bar. The consent of the first tenant in tail and all persons in existence having any beneficial estate or interest under the settlement prior to such tenant in tail's estate, and all trustees having any estate or interest on behalf of any unborn child prior to such tenant in tail's estate is required. The Court, however, has power to dispense with such consent or concurrence upon notice being given to them containing certain particulars.

In the above case, the petitioner, being a married woman, must be examined apart from her husband touching her knowledge of the nature and effect of the application, and it must be ascertained that she freely desires to make the application, and it matters not

whether the lands and messuages are settled to her separate use or not; and no clause or provision in the settlement restraining anticipation will prevent the Court from exercising, if it thinks fit, the power of sale, and no such exercise will cause any forfeiture, notwithstanding any provision in the settlement to the contrary. Her consent is taken either in Court or before an independent solicitor appointed by the Court, if she resides within the jurisdiction. Such appointment is made by order on summons taken out in chambers after the petition is presented and heard. The married woman is examined, and in writing then testifies to her knowledge of its nature, and of her free desire to make the application, and the solicitor certifies to the Court to the same effect. Both the examination and certificate are verified by the solicitor's clerk by affidavit.

Notices are to be given of the petition by advertisement, as the Court may direct; any person, whether interested in the estate or not, may apply by motion to be heard in opposition or in support of the application. Upon the hearing, if the order is made, the sale is carried out in the same manner as other sales under the Court's supervision in chambers. (Haynes's Chancery Practice, 269—276; Middleton's Settled Estates, 2nd ed., 93.) For practice respecting sales by the Court, see Haynes's Chancery Practice, 438.

231. *What was the object and general scope of "The Improvement of Land Act, 1864"? How was it enlarged by the Act of 33 & 34 Vict. c. 56?*

The object of the Act is to enable landowners, upon application to the Land Commissioners, to obtain, first, a provisional order, and secondly, an absolute order, which will have the effect of charging the fee simple with the expenses of certain improvements on land specified in that Act and the Acts amending it, with interest thereon. In furtherance of this object, the Act provides for the registration of memorials of the rent-charges in a registry which it establishes; it declares every charge under the Act to be, as regards the holder, personal property, and provides for their being assigned by deed, and merging the whole or part of the rent-charge in the beneficial interest in the land, and enables trustees to advance money on mortgage of the land, notwithstanding any such charge, and enables them to advance money on the security of such rent-

charges or mortgages thereof, and gives the Land Commissioners ample powers to carry out the Act.

The scope of the Act embraces and that Act defines as improvements of land the following :—

- (1.) The drainage of land, and the straightening, widening, deepening, or otherwise improving the drains, streams, and watercourses of any land.
- (2.) The irrigation and warping of land.
- (3.) The embanking and weiring of land from the sea or tidal waters, or from lakes, rivers, or streams, in a permanent manner.
- (4.) The inclosing of lands, and the straightening of fences and re-division of fields.
- (5.) The reclamation of land, including all operations necessary thereto.
- (6.) The making of permanent farm roads, and permanent tramways and railways and navigable canals for all purposes connected with the improvement of the estate.
- (7.) The clearing of land.
- (8.) The erection of labourers' cottages, farm-houses, and other buildings required for farm purposes, and the improvements of and addition to labourers' cottages, farm-houses, and other buildings for farm purposes already erected, so as such improvements or additions be of a permanent nature.
- (9.) Planting for shelter.
- (10.) The construction or erecting of any engine-houses, water-wheels, saw and other mills, kilns, shafts, wells, ponds, tanks, reservoirs, dams, leads, pipes, conduits, water-courses, bridges, weirs, sluices, flood-gates or hatches, which will increase the value of any lands for agricultural purposes.
- (11.) The construction or improvement of jetties or landing places on the sea coast, or on the banks of navigable rivers or lakes, for the transport of cattle, sheep, and other agricultural stock and produce, and of lime, manure, and other articles, and things for agricultural purposes; provided that the commissioners shall be satisfied that such works will add to the permanent value of the lands to be charged to an extent equal to the expense thereof.
- (12.) The execution of all such works as in the judgment of the commissioners may be necessary for carrying into effect any matter hereinbefore mentioned, or for deriving the full benefit thereof.



The above-mentioned Improvement of Land Act, 1864, has been amended by the Limited Owners' Residences Act, 1870 (33 & 34 Vict. c. 56), which enables owners of settled estates to charge such estates, within certain limits, with the expense of building mansions as residences for themselves.

The same Act has further been amended by the Limited Owners' Residences Act, 1870, Amendment Act, 1871 (34 & 35 Vict. c. 84), which makes the erection or the improvement of a mansion, house, and usual buildings appertaining thereto, improvements within the meaning of the Improvement of Land Act, 1864. And see Part VII. of the "Settled Land Act," 1882 (45 & 46 Vict. c. 38).

*232. A legal tenant for life of an estate in strict settlement mortgages his life estate. What effect has this on a power of sale, with the consent of the tenant for life, given to the trustees by the settlement? What effect would a sale of his life estate by the tenant for life have upon the power?*

The tenant for life who has mortgaged his life estate will be able to give a valid consent with the concurrence of his mortgagee. (*Walmsley and Butterworth*, Rolls, 28th July, set out in Sugden on Powers, 8th ed., 62.)

The tenant for life who has sold his life estate, it has recently been decided, can also give a valid consent with the concurrence of the purchaser of such estate. (*Alexander v. Mills*, L. R. 6 C. A. 124; 1 *Prideaux*, 11th ed., 288; and see the Settled Land Act, 1882 (45 & 46 Vict. c. 38).)

#### SETTLEMENTS AND VOLUNTARY DISPOSITIONS.

*233. Briefly state the uses, trusts, powers, and provisions usually contained in a settlement, whereby on the marriage of the settlor, family estates are settled in strict settlement.*

Such a settlement of real estate will contain :—Parties, Testatum Conveyance as settlor by the intended husband of the parcels to the use that the trustees shall receive a rent-charge for the separate use of the wife as pin-money. Subject thereto to the use of the husband for life. After his death that wife shall take a jointure. Then to

trustees for one thousand years to secure portions for younger children. Then, subject thereto, to the first and other sons of the marriage in tail male, with remainder to the use of the same first and other sons in tail, with remainder to all the daughters of the marriage in equal shares as tenants in common, with cross remainders between them, with an ultimate remainder to the husband in fee simple. Definition of "younger children," power for the husband to appoint children portions as he may think fit, and in default of appointment children to take equally, with hotchpot clause. Proviso that charge for portions shall be reduced if there are one, two, or three younger children. Trusts of term of one thousand years. Trust to raise annual sums for maintenance of infant younger children, and, subject thereto, to permit rents to be received by the person from time to time entitled. Trustees to raise moiety of presumptive shares of sons for their advancement. (If so instructed, here insert power to the husband to jointure a future wife and to charge with portions for children of a future marriage, to limit term to trustees to raise portions, power to the husband to authorise trustees to raise annual sum for maintenance of minors and to raise one half of presumptive portions of sons for advancement.) Power for trustees to take possession of trust property during any infancy. Power to grant agricultural or occupation leases for twenty-one years, and building leases for ninety-nine years, and mining leases for forty or sixty years. Power to enter into building contracts for leases, declaration that lease under powers valid though not in accordance with contract. Power to accept surrender of existing leases. Power to give sites for churches, &c. Power to trustees at the request of the tenant for life and after his death at their discretion to raise money by mortgage to be expended in the improvement of lands. Power to trustees to sell or exchange, to enfranchise copyholds, and to make partition, and for any such purposes to revoke old uses and limit new uses. Power for the trustees to apply sale moneys in payment of incumbrances affecting the settled estates or in purchase of other lands but any such lands so purchased are to be settled to the same uses, proper provisions to be inserted in every settlement for renewal of leaseholds for years or lives, power of sale to be deemed to include sales to railway companies. Lands may be sold subject to exception of mines, and *vice versa*, purchase moneys until they are laid out in

land to be invested, power to lay out roads, &c. Mortgagees are not to be bound to enquire as to regularity of mortgage, investment clause, and lastly, person to exercise power to appoint new trustees.

It may be mentioned that the settlement may be materially shortened owing to the provisions of the Settled Estates Act, 1877 (40 & 41 Vict. c. 18), the Conveyancing and Law of Property Act 1881 (44 & 45 Vict. c. 41), and the Settled Land Act, 1882 (45 & 46 Vict. c. 38).

*234. Is a voluntary conveyance or settlement, duly executed, which the donor retains in his possession without publishing it, revocable by the donor, and by what means? Will it make any difference whether the property so conveyed or settled is real or personal?*

Where there is no power of revocation contained therein, and being a conveyance it is not made to a trustee for the donor's creditors, to whom its existence is not communicated, or being either a conveyance or settlement it is not void, or is not capable of being declared void, because it violates the provisions of either 13 Eliz. c. 5; 27 Eliz. c. 4; 32 & 33 Vict. c. 71; 41 & 42 Vict. c. 31; or because of its having been obtained by fraud from the donor, or of such power of revocation being omitted through fraud or mistake, the conveyance or settlement is irrevocable, whether the donor retains it in his possession or not and whether he publishes it or not.

If the voluntary conveyance or settlement affects real property it is not revocable directly by the donor, but it is revocable indirectly by the donor conveying the same property again to a purchaser for valuable consideration. It has been decided that such last-named conveyance comes within the exception contained in 27 Eliz. c. 4, in favour of a purchaser for value, and renders the former conveyance void immediately after its execution, and it matters not whether such purchaser has notice of the former voluntary conveyance or settlement or not, unless the donee is a charity. If a voluntary conveyance or settlement affects pure personalty or leaseholds it is irrevocable directly or indirectly. (See 2 Prideaux, 11th ed., 206.)

235. *By settlement, executed previously to marriage, property belonging partly to the husband and partly to the wife was settled upon trust to pay the income to the husband for life, subject to a proviso that, if he should at any time become bankrupt, or in any wise charge or incumber the income, or do any act whereby he should cease to be entitled to the income, such income should be paid to the person next entitled under the trusts of the settlement, and after the decease of the husband or the sooner determination of his estate, upon trust for the wife for life, and after her decease for the children. In the event of the husband becoming bankrupt, or aliening or incumbering his life interest, who is entitled to the income? State the ground of your answer.*

In the event of the husband becoming bankrupt, so much of the income as is produced from the property that belonged to the husband before marriage his trustee in bankruptcy will be entitled to receive on behalf of the creditors, as such a proviso as regards such property is considered a fraud on the bankruptcy law, and as such invalid against his trustee. Such proviso is not, however, invalid as against the husband's alienees or incumbrancers, either as regards the property which belonged either to the husband or to the wife before the marriage, and therefore on the husband aliening or incumbering his life interest, the income of both properties will go to the person next entitled under the trusts of the settlement on the determination of the husband's life interest—i.e., his wife, if living if not, his children. If the husband becomes bankrupt, so much of the income as is produced from the property that belonged to the wife before marriage will also pass to the person next entitled under the trusts of the settlement on the determination of the husband's life interest—i.e., his wife, if living, if not, his children; because as regards such property the proviso is valid even in bankruptcy. (See cases cited in 2 *Prideaux*, 11th ed., 195, 196.)

236. *State the rule in equity as to giving effect to assurances or gifts made in favour of volunteers (other than creditors).*

*A. lends B. a sum of money repayable by instalments, and subsequently refuses to take such instalments, and verbally declares his intention to forgive the debt, and appoints B. executor. Is B. liable to repay the loan after A.'s death?*

The rule in equity being that "equity will not perfect an imperfect gift," it follows that the Court will not lend its assistance in any way to support assurances or gifts made in favour of volunteers (other than creditors) by decreeing specific performance or otherwise, unless the instrument of assurance or gift is complete in itself; when, however, the instrument of assurance is a will, the Court, for the benefit of testators who are unable to obtain professional advice, makes an exception. Another, and the only other exception to the above rule, exists in favour of charities, when the Court will not allow the grantor's object to be defeated by a technical defect in the mode of conveyance, unless it is contrary to the express words of some statute, if a general intention to benefit some charity is manifested, and such intention is not shown for an object of a public general nature, which may or may not be satisfied by applying the subject-matter to a non-charitable object. If the instrument of assurance or gift is in itself perfect and complete, then the Court will enforce it whenever called upon to do so in a proper case.

If ever the deed of gift is called into question, the voluntary grantee must be prepared to show that it was the deliberate and voluntary act of the grantor, and was made by him in favour of the grantee *bond fide*. If it is never called in question, and is complete, as above stated, it will take effect like a conveyance for valuable consideration.

In the above case B. will not be liable; first, because A. gave B. the instalments and completed and evidenced the gift (1) by refusing to take the instalments, and (2) subsequently declaring his intention to forgive the debt, and (3) not demanding the instalments of B. before his death; (4) no suggestion of *mala fides* on B.'s part, or want of deliberation on A.'s part; and (5) by A. appointing B. his executor. The fact of A. appointing B. his executor would formerly alone have been sufficient in a court of law, though not in a court of equity, but now equity prevails, and such an appointment will not operate as a gift of a debt due from the executor to the testator. (See *Strong v. Bird*, 43 L. J. Ch. 814; L. R. 18 Eq. 315; and *Re Breton, Breton v. Woolven*, 50 L. J. Ch. 369.)

## SPECIFIC PERFORMANCE.

237. *What is the ground on which Courts of Equity have acted to compel specific performance of contracts? State cases in which, although the ground exists, the Court will not act.*

The ground is the inadequacy of the legal remedy for damages in the particular case before the Court to give the plaintiff seeking specific performance the full compensation to which he is entitled, and to put him in a position as beneficial to him as if the agreement had been specifically performed.

The Court will refuse such relief, although the above ground exists,

(1.) From the nature of the contract, as (a) Where the agreement is illegal. (b) Where the agreement is not founded on a valuable consideration. (c) Where the agreement is unreasonable or prejudicial to third persons interested in the property. (d) Where there are conflicting claims likely to harass the purchaser in the future. (e) Where the actual performance is impossible in fact, or the material terms are such that it is not in the power of any judicial tribunal to enforce.

(2.) From the conduct of the parties, as (a) Where the plaintiff does not come with clean hands (*i.e.*, if, for instance, he has wilfully misrepresented or concealed the facts from the defendant). (b) Where the plaintiff has been guilty of laches. (H. A. Smith's Equity, 571—575.)

238. *On what ground have Courts of Equity allowed acts of part performance of contracts to exclude the operation of the Statute of Frauds?*

*A tenant for life with power of leasing enters into a parol agreement to grant a lease, which agreement is partly performed by the proposed lessee in the lifetime of the tenant for life. Under what circumstances will the remainderman be bound by the agreement?*

The Courts will enforce specific performance of a contract within the statute where the parol agreement has been partly carried into execution by the party praying relief. (*Caton v. Caton*, L. R. 1 Ch. 137.) The distinct ground upon which Courts of Equity

interfere in cases of this sort is that otherwise one party would be able to practice a fraud upon the other ; and it could never be the intention of the statute to enable any party to commit a fraud with impunity. Indeed, fraud in all cases constitutes an answer to the most solemn acts and conveyances, and the objects of the statute are promoted instead of being obstructed by a jurisdiction for discovery and relief. And where one party has executed his part of the agreement in the confidence that the other party would do the same, it is obvious that if the latter should refuse it would be a fraud upon the former to suffer this refusal to work to his prejudice. (*Nicol v. Jackaberry*, 10 Gr. 109 ; *Hussey v. Horn Payne*, L. R. 4 App. Ca. 311 ; *Snell's Equity*, 5th ed., 531.)

It must be remembered that the acts of part performance must be such as are not only referable to an agreement such as that alleged, but such as are referable to no other. For if they are acts which might have been done with other views, they will not take the case out of the statute, since they cannot properly be said to be done by way of part performance of the agreement. (*Gunter v. Halsey*, Amb. 586 ; *Lacon v. Mertins*, 3 Atk. 4 ; *Alderson v. Maddison*, 50 L. J. Q. B. 466 ; 18 L. J. N. C. 73 ; *Snell's Equity*, 5th ed., 532.)

In the above case of a lease by a tenant for life who has a power of leasing which is invalid because it is not in writing, or being in writing is not effectual under the Statute of Frauds, it seems that it will not bind the remainderman, *although it is in part performed* by the intended appointee, as where a lease is agreed to be granted by parol under a power, and the lessee expends money in improvements during the life of the person who agreed to grant the lease. (*Shannon v. Bradstreet*, Rep. t. Red. 52 ; *Blore v. Sutton*, 3 Mer. 237 ; *Lowry v. Lord Dufferin*, 1 Ir. Eq. Rep. 281 ; *O'Fay v. Burke*, 8 Ir. Ch. Rep. 225.) In *Carter v. Carter* (Moze. 365), the Master of the Rolls thought that a parol appointment would not be good in equity even before the Statute of Frauds. It is, Sir W. Grant observed, considered as a fraud in a party permitting an expenditure on the faith of his parol agreement to attempt to take advantage of its not being in writing. But of what fraud, he asked, is a remainderman guilty who has entered into no agreement, written or parol, and has done no act on the faith of which the other party could have relied ? This ground has been considered

to be entitled to great weight. (*Morgan v. Milman*, 10 Hare, 279; 3 De Gex, Mac. & Gor. 24.) But if after the death of the lessor under a power the remainderman, with full knowledge of the defect, lie by and suffer the lessee to improve the estate by re-building or otherwise, the Court in administering equity will, on the ground of fraud, compel him to grant a new lease to the lessee (*Stiles v. Cooper*, 3 Atk. 692; *Blore v. Sutton*, *ubi supra*); but in such a case if the covenants and conditions are improper ones, the Court will reform them. (Sugden on Powers, 8th ed., 554, 555.)

We do not, therefore, consider the above answer at all affected by the principle stated by the late learned Master of the Rolls in *Walsh v. Lonsdale* (52 L. J. Ch. 2). The answer would be the same whether the power to lease is derived under a deed or will, or under the Settled Estates Act, 1877, or Settled Land Act, 1882.

239. *An action is brought by a lessor for specific performance of an agreement for a lease with a parol variation as to the parcels. The defendant by his counterclaim asks for specific performance of the agreement without the variation. How will the Court deal with the matter?*

The Court will dismiss both the claim and counterclaim with costs. The claim will be dismissed on the ground of the 4th section of the Statute of Frauds requiring the *whole* contract to be in writing. The counterclaim will be dismissed because the plaintiff shows that the alleged written contract is not the whole of the real contract between the parties, and it is only the real contract which the Court will enforce by a decree for specific performance without the consent of both parties thereto. In other words, although the parol variation is not admissible in evidence to support a claim for specific performance, yet it is admissible to defeat a claim for specific performance. (*Townshend v. Stangroom*, 6 Ves. 328; H. A. Smith's Equity, 598.)

240. *The plaintiff in an action seeks specific performance of a written agreement, with a variation supported by parol evidence. The defendant, by his counterclaim, asks specific performance of the agreement without the variation. The variation having been proved, what will the result of the proceedings be?*



It will be seen that this question involves the same points as the preceding one, and the answer to that will, therefore, be the answer to this question.

241. *A. verbally promised B. to give him a certain freehold estate in consideration of B. marrying A.'s daughter. The marriage took place, and B. (who was A.'s tenant) continued in possession of the property, and received the title-deeds from A., and ceased to pay rent, but no conveyance was executed to him. A. died intestate, and his heir-at-law brings ejectment against B. Can the latter retain the property?*

No, he cannot retain the property against the heir-at-law, because there was no writing to satisfy the 4th section of the Statute of Frauds, and there was no part performance of the verbal contract to take it out of that statute. The marriage alone is not a sufficient part performance. (H. A. Smith's Equity, 594.) The possession of B., to amount to a part performance, must be distinctly and separately referable to the verbal contract and not to anything else, as is the case here, i.e., in continuation of the pre-existing tenancy. (See Fry on Specific Performance, 2nd ed., 262.) The case of *Ungley v. Ungley* (46 L. J. Ch. 189, on App. 854; L. R. 4 Ch. 73; 5 Ch. D. 887) resembles the above in the facts, except as to the main point. See another recent case on the same point, *Alderson v. Muddison* (50 L. J. Q. B. 466; 18 L. J. N. C. 73.)

242. "Non videntur qui errant consentire." *Has this maxim any application in specific performance?*

*A. writes to B., offering to sell an estate for £18,000, and B. accepts the offer. A. had made his offer on the basis of an addition of the valuations of several farms composing the estate, the correct total of the addition being £28,000, and on discovering his error he explains it, and repudiates the contract. Is B. entitled to specific performance?*

The above maxim means "They are not considered to consent who commit a mistake." (Broom's Legal Max., 5th ed., 262.)

A mistake may be of such a nature as to compel the Court either to dismiss the plaintiff's action for specific performance, or to put the plaintiff to his election either to have the contract performed without compensation or to have his action dismissed or to decree

specific performance with compensation for the mistake, either under its equitable jurisdiction or under the terms of the contract, or the Court may decree specific performance *simpliciter*, notwithstanding the mistake. (See H. A. Smith's Equity, 617.)

B., in the above case, would not be entitled to specific performance. (*Webster v. Cecil*, 30 Beav. 62; Law Examination Journal, No. 49, p. 129.)

243. *How far is mutuality a necessary ingredient in an action for specific performance? A railway company contracts to purchase lands, but allows the time during which they could, by their statutory powers, acquire the land to expire. Can the contract be specifically enforced against the company?*

As a general rule, the Court will not specifically execute contracts that are not mutually binding on the parties *at the time they are entered into*. Thus, a party contracting with an infant cannot be sued for specific performance, for the infant could not sue. (*Flight v. Bolland*, 4 Russ. 298.) Again, a tenant in tail cannot obtain a decree for specific performance of a contract entered into by the tenant for life unless he can do so under the powers contained in the Settled Land Act, 1882. (*Ricketts v. Bell*, 1 De G. & Smith, 335.) The original want of mutuality may, however, be waived. This is practically the case where a vendor has no title at the date of the contract, but obtains one before the hearing of an action for specific performance brought by him, for the purchaser in such cases generally can retire from the contract if he signifies his intention to do so immediately after the discovery of the vendor's want of title, and not having done that, he has waived his objection on that ground.

There is an exception to the rule as to mutuality being necessary as regards the remedy, and that arises in cases where writing is required under the provisions of the Statute of Frauds. Then the writing required by the statute is only signed by one party to the contract, and this is quite common in practice. Such a writing, if it contains the essentials of a contract, whatever may be its form, and if it complies with the Statute of Frauds, can always be enforced against the party signing it, although he cannot enforce it against the party who has not put his signature to that or any

other writing containing the terms of the contract and the above requisites. This exception arises from the fact of the Statute of Frauds only requiring the contract to be signed by the party to be charged.

In the above case the contract can clearly be enforced against the company, for it was mutually binding on the vendor and railway company *at the time it was entered into*. The fact that the company now cannot enforce the contract through their own wilful neglect cannot affect the vendor. (Watson's Compendium of Equity, vol. 1, pp. 86—7; Fry on Specific Performance, 2nd ed., 203.)

---

#### SUCCESSION DUTY.

244. *What is a transmitted succession, and how is the duty payable in respect of such a succession, assessed by the Succession Duty Act?*

A transmitted succession arises where the interest of a successor in personal property shall, before he shall have become entitled thereto in possession, have passed by reason of death to any other successor or successors. One duty only is to be paid in respect of such interest, and is to be due from the successor who first becomes entitled thereto in possession; but such duty is to be at the highest rate which, if every such successor had been subject to duty, would be payable by any one of them. (16 & 17 Vict. c. 51, s. 14; Haynes's Student's Statutes, 2nd ed., 202.)

---

#### TECHNICAL EXPRESSIONS.

245. *What is the meaning of the word "seisin"? What is the difference between "actual" and "virtual" seisin, and between "seisin in law" and "seisin in deed"? With regard to the difference between the two latter, what change was effected by the Inheritance Act?*

Seisin means the feudal possession of freehold land. "Actual" seisin means, as the name implies, the taking possession of the

land. "Virtual" seisin means the doing of an act which in law only, though perhaps not in fact, amounts to the taking of possession, as if notice is given to a tenant to pay the rent of freehold hereditaments to another than the person who has been in the habit of receiving it; for rent is an incorporeal hereditament and incapable of actual seisin.

Seisin in deed is the same as actual seisin above explained. Seisin in law arises where any lands descend to an heir and he has not entered upon them. Prior to the Inheritance Act the maxim that obtained was "*Seisina facit stipitem*," but now the rule by that Act (3 & 4 Will. IV. c. 106) is:—"Descent is traced from the last person entitled who did not inherit." The consequence is, that whereas before that Act seisin in deed was required before descent could be traced from a person entitled to land besides seisin in law, now seisin in law is alone sufficient for the purpose. (See hereon Stephen's Commentaries, 8th ed., vol. 1, 263 *et seq.*; Wharton's Law Lexicon, 6th ed., 876; and Haynes's Student's Statutes, 2nd ed., 107.)

246. Give examples of a "bare possibility," a "power," and a "licence," and distinguish them respectively from an "estate."

"Bare possibility."—The chance of the eldest son of an owner of land succeeding to his father's lands.

A "power."—The right of a mortgagee to sell the mortgaged land and recoup himself out of the proceeds under certain conditions which is given to him by the mortgage deed expressly or by implication.

A "license."—The authority required before a public house can be legally opened.

The above imply no independent interest in the land, whilst an estate in land of itself implies an independent interest in the land of which the holder is owner for the time being. (1 Steph. Com., 8th ed., 229.)

## TITHE RENT-CHARGE.

247. *In what essential features do the tithe rent-charges created by the "Tithe Commutation Acts" differ from the tithes for which they were substituted in respect of (1) the nature and incidence of the obligation, and (2) the mode of recovery?*

(1.) Tithes are defined as the tenth part of the increase yearly arising and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants; the first species, being usually called *predial*, as of corn, grass, hops and wood; the second *mixed*, as of wool, milk, pigs, &c., consisting of natural products, but nurtured and preserved in part by the care of man; and of these the tenth must be paid in gross; the third *personal*, as of manual occupations, trades, fisheries, and the like; and of these only the tenth part of the clear gain and profits is due; nor are the tithes generally due in respect of these at all except so far as the particular custom of the place may authorise the claim. From the above definition it may be inferred that whatever is of the substance of the earth or is not of annual increase, as stone, lime, chalk, and the like, is not in its nature tithable, nor is tithe demandable except by force of special custom in respect to animals *feræ naturæ*. Tithes do not, apart from the Tithes Commutation Acts, merge, though they and the land from whence they arise belong to the same person.

The tithe rent-charges were created by 6 & 7 Will. IV. c. 71, and the various Acts since passed amending the same. They fluctuate according to the price of corn. They can be made to merge whenever both the tithe rent-charge and the land from whence they arise belong to the same person. No person is liable for the payment of these tithe rent-charges; but they are recoverable in the manner hereinafter mentioned.

Any ecclesiastical person (*i.e.*, a clergyman) by agreement with the landowner may take land instead of his tithe rent-charge, but cannot take more than twenty acres in the whole by virtue of any such agreement or agreements made in the same parish. This latter provision, however, does not extend to improPRIATORS or lay rectors.

(2.) Tithes unpaid may be recovered by suit in one of the

Ecclesiastical Courts, whether the tithe owner be a clergyman or lay appropriator, provided the *right* does not come into question, but only the *fact* whether or not the tithes allowed to be due are really subtracted or withholden. But it seldom happens that tithes are sued for in this way ; for various statutes have provided a summary method of proceeding before magistrates in petty sessions, except where the actual title to the tithe or the actual liability or exemption of the land is in question.

The tithe rent-charge can be recovered by distress if in arrear for twenty-one days after any half-yearly day of payment. No more than two years arrears' can be recovered by distress. If the tithe rent-charge be in arrear for forty days after the half-yearly day of payment, and no sufficient distress be found upon the premises, the owner of the tithe rent-charge can obtain a writ under which the sheriff delivers him possession of the lands charged with the rent-charge. The tithe-owner is entitled to hold the lands until all arrears (not exceeding two years' arrears prior to the time of taking possession) and costs are fully satisfied.

The Ecclesiastical Courts cannot try the right to tithes unless between the clergy themselves, and can only compel the payment when the right is not disputed. (2 Steph. Com., 8th ed., 724, 733 ; Eustace Smith's Summary of Ecclesiastical Law, 64—7 ; Kerr's Student's Blackstone, 295.)

The new remedies attached to rent-charges, not being rent incident to a reversion, by sect. 44 of the Conveyancing and Law of Property Act, 1881, will also apply to tithe rent-charges.

---

## TRUSTEES.

248. *If an executor, who is also appointed trustee of real and personal estate, prove the will, can he subsequently disclaim the trusts ? Would his position be in any way altered if he disclaims the trusts before proving the will ?*

No, he cannot disclaim the trusts after proving the will, for by the fact of his taking out probate he is deemed to have accepted both offices.

He may disclaim the trust of the real estate first and then prove the will, as the offices of trustee and executor, though vested in one person, are distinct.

249. *Can a trustee or agent, empowered or authorised to sell by public auction, under any and what circumstances sell by private contract; and, vice versâ, if empowered or authorised to sell by private contract, can he sell by public auction?*

An agent or trustee authorised to sell by public auction either generally, or even for a specified sum, cannot, whatever price be offered, sell by private contract; but in one or two recent cases, after an abortive attempt to sell by public auction subject to a reserved bidding, a sale by the trustee or agent by private contract at the reserved price has been upheld, and the title has, under special circumstances, been forced on the purchaser.

And an express authority to sell by private contract would not, it is conceived, justify a sale by auction unless the authority were to sell for a specified sum and the price obtained at the auction (after payment of the incidental expenses) exceeded or equalled that amount. Nor does an authority to sell to A. for a specified sum necessarily justify a sale to B. for that (or, it is conceived, for any greater) sum. (Dart's Vendors and Purchasers, 5th ed., vol. 1, 65—6).

Unless it is expressly directed to the contrary in the trust instrument, by 23 & 24 Vict. c. 145, ss. 1, 32, 34, trustees who have a power of sale over hereditaments under any deed or will coming into operation between 28th August, 1860, and 31st December, 1882, may sell by public auction or private contract, and this would include a trust for sale, though this latter point has never been decided, for to hold otherwise would be placing a narrow construction on the Act. (Davidson, vol. 3, 3rd ed., 565.) As to instruments coming into operation after 31st December, 1881, by 44 & 45 Vict. c. 41, s. 35; trustees may sell either by public auction or private contract in the absence of a contrary intention being expressed in the instrument (23 & 24 Vict. c. 145; ss. 1, 32 and 34 are repealed by 45 & 46 Vict. c. 38, s. 64).

250. *The trustees of a settlement, at the request of the tenant for life, leave the settlement funds in a business whereby considerable*

*profits are made, but such employment of the funds is not within the scope of their powers. How will the profits be dealt with as between the tenant for life and the reversioners?*

So much of the income as is equal to interest on the capital at the rate of £4 per centum per annum will be paid to the tenant for life and the surplus income will be re-invested from time to time and added to the capital. This is in accord with the decision of V.-C. Hall in *Re Hill, Hill v. Hill* (50 L. J. Ch. 551). The order in that case dealt with a past state of facts, where the unauthorised investment had gone on for years, and did not provide for the interest on the additional capital thereby created from time to time being paid to the tenant for life; at least, it is not so stated in the report.

251. *An action is brought by A. against B. and C., trustees, to make them liable for breaches of trust, and succeeds against both. B., however, contends from the first, that as between himself and C., the latter is primarily liable. What course should he take to test the question? Detail the various steps you think likely to be taken in such an action.*

B. should, in accordance with Order XVI., r. 17, set out his contention as above stated in his statement of defence in a separate paragraph or paragraphs after he has set out his answer and defence to the plaintiff's statement of claim, and in addition to delivering to the plaintiff he *must* in such a case deliver a copy to C.'s solicitor. No leave of the Court is necessary, as C. is a party to the action already. (Haynes's Chancery Practice, 48.) Such a claim of B. is not a counterclaim, for the plaintiff is not interested therein (see *Harris v. Gamble*, 46 L. J. Ch. 768; L. R. 6 Ch. 748), and must not be marked either outside or inside as a counterclaim (*Furness v. Booth*, 46 L. J. Ch. 112; L. R. 4 Ch. D. 586. For other cases, see L. J. Digest, 1875 to 1880, pp. 472—3). C. will then take out a summons to have directions as to how the action shall be tried, if the plaintiff does not take out a summons to obtain and succeed in getting an order striking out the clause raising B.'s contention against C. in his defence as embarrassing. (*Padwick v. Scott*, 45 L. J. Ch. 350; L. R. 2 Ch. D. 737; *MacDonald v. Carrington*, 48 L. J. C. P. 178; L. R. 4 C. P. D. 28;



*Huggons v. Tweed*, (App.) L. R. 10 Ch. D. 359.) On the hearing of C.'s summons the Court will probably direct such pleadings as it may deem necessary to raise the two issues, and may direct the primary issue to be tried first without prejudice to the second; notice of trial will succeed the pleadings in the usual way.

252. *It is required to appoint two new trustees of a settlement in the place of a deceased and a retiring trustee, to act jointly with the continuing trustees. The power to appoint new trustees is given by the settlement to the life tenant. The trust estate consists of a freehold estate of money, invested partly in Consols, partly in railway debenture stock, and partly on mortgage of freehold property. Sketch briefly the document or documents necessary for effecting the arrangements. What difference would there have been in the procedure prior to 1859, and by what statute was the change effected?*

The first instrument will be the deed of appointment of the two new trustees by the tenant for life and conveyance of the freehold estate and declaration of trusts of the Consols and railway debenture stock and of the money lent on mortgage of the freehold property. Such deed should be made by indorsement on the settlement. The deed will contain date, parties, recitals of the above facts, and all dealings (if any) with the trust property since the last appointment was made or the marriage was celebrated, whichever last happened, testatum appointment of new trustees by the life tenant in the place of the old ones, and declaration of trusts of the estate comprising the freehold estate, money in Consols, railway debenture stock, and mortgage of freehold property when transferred into the new trustees' names.

The freeholds and the money on mortgage of freeholds will be transferred by separate instruments executed immediately afterwards without disclosing the trusts on their face, and these will be in the usual form, *i.e.*, date, parties, testatum, operative words, with the addition of the words "as mortgagees" (see sect. 7 of 44 & 45 Vict. c. 41), parcels, habendum testimonium.

The Consols and the debenture stock will be actually transferred by entries being made in the books of the Bank of England and Railway Companies respectively, and certificates will be afterwards sent on by the broker stating that the new trustees are the

holders thereof. (See 2 Prideaux, 11th ed., 152, 549; Davidson's Concise Conveyancing Prec., 12th ed., 479.)

If it is wished, the expense of a conveyance of the freehold estate may be saved by inserting a declaration that the new trustees shall hold the same upon the trusts of the settlement as provided in sect. 34 of the Conveyancing and Law of Property Act, 1881; but as that section is expressly stated to be inapplicable to the other species of property mentioned above, it is probable that advantage will not be taken of it in a case like the above.

Before 1859 two deeds would have been required in order to transfer the personal estate to the continuing and new trustees. The 22 & 23 Vict. c. 35, however, empowers a person to assign personal property directly to himself and another person or persons. As to freeholds and choses in actions, see 44 & 45 Vict. c. 41, s. 50.

*253. A., sole surviving trustee of freehold and leasehold properties, dies, having by his will devised and bequeathed all estates vested in him as trustee or by way of mortgage, to B., his heirs, executors, administrators, and assigns, according to the nature and quality of such estates respectively. B. subsequently dies intestate. In whom, on B.'s death, would the legal estate in the freehold and leasehold estates respectively vest; and who would be entitled to act in the trust?*

(a.) If both A. and B. died prior to 1st January, 1882, the old law would apply, and accordingly the legal estate in the freeholds will have devolved upon B.'s heir-at-law, whilst the legal estate in the leaseholds will have devolved upon and vested in B.'s administrator.

(b.) If A. died prior to the 1st of January, 1882, and B. has died subsequent to the 31st of December, 1881, the legal estates in both the freehold and leasehold estates will have devolved upon and vested in B.'s administrator.

(c.) If both A. and B. have died since the 31st December, 1881, the legal estates will have devolved upon A.'s executor or administrator, as in that case the devise to B. is a nullity, and this same result would have happened if A. had died since the 31st December, 1881, leaving a will as above stated, and B. was now living.

As regards the persons to act in the trust in case (a), the persons

in whom the legal estates vested in the ordinary case would not be enabled to act in the trust, but new trustees must be appointed. If, however, the property was originally conveyed to the trustees, their heirs, executors, administrators, and assigns, *or* their heirs and assigns, or the trusts are declared to be capable of being exercised "by the said trustees or trustee or by the trustees or trustee for the time being" (as in *Re Morton and Hallett*, 49 L. J. Ch. 559; L. R. 15 Ch. D. 143), then, inasmuch as the settlor has shown no absolute intention that the trusts should only be exercised by the regularly appointed trustees, the persons or person upon whom, as above stated, the legal estates devolve may act in the trust temporarily, and permanent new trustees can be appointed later on.

In both cases (*b*) and (*c*), the persons in whom the legal estates vest will, by virtue of sect. 30 of The Conveyancing and Law of Property Act, 1881, be able to act temporarily in the trust, that is, for the purpose of administering to the deceased person's estate, and permanent new trustees can be appointed later on under the statutory power, or under the express power contained in the trust instrument. (See 2 *Prideaux*, 11th ed., 140; *Williams on Real Property*; 44 & 45 Vict. c. 41, ss. 30 and 31.)

---

### UNDUE INFLUENCE.

254. *A solicitor prepares a deed of gift from a client to himself, and a will conferring a benefit on himself. Discuss these cases, especially with regard to the burden of proof of undue influence, and the pendency, or otherwise, of any suit in which the client is engaged.*

If the relation of solicitor and client was not entirely dissolved when the deed of gift was made, it is void in any case, whether there was or was not any undue influence or such suit pending at the time. Such deed of gift may be confirmed by the donor's will and thus be rendered valid. The benefit conferred by the will can be claimed by the solicitor (*Hindson v. Weatherall*, 5 De Gex, M. & G. 301), unless fraud or undue influence can be proved against the solicitor; but should any one dispute the will or the benefit under it, the burden of showing that the testator gave the benefit advisedly, without the slightest pressure being put upon him by the

solicitor and well knowing what he was doing, or in other words, the onus of showing that the testator, well knowing what he was doing, *bonâ fide* conferred the benefit, is upon the solicitor. If the gift is proved to have been made by the client pending an action wherein the client was a party, the fact that such action was pending will render it the more difficult, without plenty of written evidence of the transaction, for the solicitor to show that the client was a free man, and was uninfluenced by their relationship. If a solicitor attempts to purchase his client's interest in the subject-matter of pending litigation, the purchase is void without any special proof of undue influence. (Snell's Equity, 5th ed., 103, 470.) A better feeling and more respect are now shown towards solicitors than formerly—see the Solicitors' Remuneration Act, 1881—at any rate by the Legislature.

---

#### USES AND TRUSTS.

255. *Explain, and illustrate by example, the doctrine of "scintilla juris." What legislative enactment has been passed during the present reign with regard to it?*

"The establishment of shifting and contingent uses occasioned great difficulties to the early lawyers, in consequence of the supposed necessity that there should, at the time of the happening of the contingency on which the use was to shift, be some person seised to the use then intended to take effect. If a conveyance were made to B. and his heirs to the use of A. and his heirs until a marriage or other event, and afterwards to the use of C. and his heirs, it was said that the use was executed in A. and his heirs by the statute, and that as this use was co-extensive with the seisin of B., B. could have no actual seisin remaining in him. The event now happens. Who is seised to the use of C.? In answer to this question it was held that the original seisin reverts back to B., and that on the event happening he becomes seised to the use of C. And to support this doctrine it was further held that meantime a possibility of seisin, or *scintilla juris*, remained vested in B." This was not attended to in practice. The doctrine, however, has since been abolished by 23 & 24 Vict. c. 38, providing (s. 7)

that "where by any instrument any hereditaments have been or shall be limited to uses, all uses thereunder, whether expressed or implied by law, and whether immediate or future, or contingent or executory, or to be declared under any power therein contained, shall take effect when and as they arise by force of and by relation to the estate and seisin originally vested in the person seised, to the uses and the continued existence in him or elsewhere of any seisin to uses or *scintilla juris*, shall not be deemed necessary for the support of or to give effect to future or contingent or executory uses; nor shall any such seisin to uses or *scintilla juris* be deemed to be suspended, or to remain, or to subsist in him or elsewhere." (Williams's Real Property, 11th ed., 290.)

256. *What estates would A. (the grantor) take under the following limitations, if created by himself by deed prior to 1882?*

- (a.) *To the heirs of his body.*
- (b.) *To the use of B. for the term of 100 years, with remainder to the heirs of A.'s body.*
- (c.) *To the use of B. during A.'s life, with remainder to the heirs of A.'s body.*
- (d.) *To the use of A. for the term of 100 years, with remainder to the heirs of A.'s body.*

*Give the grounds of your answer.*

(a.) A. takes no estate under such a limitation; for, even if it should be supported under the Contingent Remainders Act, 1877, as an executory limitation in favour of the person who should hereafter prove to be A.'s heir-at-law, there is no limitation to A. himself.

(b.) A. takes no estate under this limitation either, for the same reason.

(c.) A. takes no estate under this limitation either, for the same reason, but keeps his own prior interest, subject, of course, to B.'s estate *pur autre vie* whilst it lasts.

(d.) A.'s interest, assuming, as we have all through, that he has the fee simple in the lands so limited, is unaffected by such limitation.

257. *Distinguish between executed and executory trusts, and the general rules of construction applicable to each, and give illustrations.*

A trust is said to be *executed* when no further act is required to give effect to it, the terms of the trust being completely declared by the instrument creating it; as where an estate is conveyed or devised unto and to the use of A. and his heirs in trust for B. and the heirs of his body. A trust is said to be *executory* when some further act must be done by the creator of the trust or by the trustees to give effect to it, as in the case of marriage articles, which require a settlement to follow to declare fully the limitations of the trust, or as in the case of a will by which property is devised to trustees upon trust to settle or convey in a more perfect and accurate manner.

The distinction between an executed and an executory trust does not rest merely on the fact that the trustee may be required to execute some further instrument to give full effect to his trust. For instance, a mere direction to convey upon certain specified trusts will not render those trusts executory, so as to give to a court of equity the latitude of construction which we shall see to be applicable in the case of executory trusts.

The true distinction depends on the question whether the creator of the trust has been what is called his own conveyancer; whether, that is to say, he has so defined his intention that you have nothing to do but to take the limitations he has given you and convert them into legal estates, or has left it to the Court to make out from general expressions what his intention is.

It is clearly established that in the case of executed trusts a court of equity will construe technical words in the same manner as a court of law would construe them when applied to legal estates. If, for instance, an estate is vested in trustees and their heirs in trust for A. for life, without impeachment of waste, with remainder to trustees to preserve contingent remainders, with remainder in trust for the heirs of A.'s body, the trust being executed, A. will, according to the rule in *Shelley's case*, take an equitable estate tail, just as he would have taken a legal estate tail in case similar words of limitation had been used in a conveyance direct to himself without the intervention of trustees.

In cases, however, of executory trusts where something is left to be done—*viz.*, the trusts are left to be executed in a more careful and more accurate manner—a court of equity does not consider itself bound to construe technical expressions with the same legal

strictness. If, from the nature of the instrument or from the circumstances of the case, the intention of the creator of the trust can be ascertained, the Court will, in supplying or directing the further act necessary for the execution of the trusts, mould the trusts according to such intention.

The effect of the distinction between executed and executory trusts is most conspicuous in two classes of cases: (1) those arising under marriage articles; (2) those arising under wills. It is sometimes represented that these two classes of cases are treated on different principles. This is not strictly true. The principle in both cases is that the executory trusts are to be carried into execution in accordance with the intention of the creator of the trust. The difference between the two cases is that marriage articles from their very nature afford an indication of that intention, which is wanting in the case of a will. In the former, the presumed object of the instrument is to make provision for the issue of the marriage; in the latter, there is no reason to suppose that a testator intends his beneficiary to take one quantum of interest rather than another, an estate for life rather than an estate in tail or in fee. If, however, even in the case of a will, it can be ascertained from the language employed that the testator did not mean to use the expressions he has employed in their strict technical sense, the Court in decreeing such settlement as he has directed, that is in executing the executory trust, will depart from his words in order to execute his intention. (H. A. Smith's Equity, 40—42.)

258. *Enumerate the various kinds of trusts in reference to the mode in which they originate, and give an example of each.*

Trusts are divided into two classes:—

(1.) Those which are created by the act of the party, which are concisely termed “express trusts,” as, for instance, the trusts contained in a marriage settlement.

(2.) Those which arise from the operation of law, which include

(a.) Resulting trusts, where equity, from the manner of a party's dealing with his property, presumes an intention on his part to sever the legal and equitable interest by creating a trust, as where a man buys freehold land in the name of a person who is not related to him by blood or marriage.

(b.) Constructive trusts, where equity will, without any reference to the expressed or presumed intention of the parties, in order to satisfy the demands of justice and good conscience, assume the severance of the legal and equitable interests and create a trust, as, for instance, the vendor's lien for unpaid purchase-money on the sale of real property. (H. A. Smith's Equity, 31.)

259. *Explain and illustrate by one example each the meaning of implied trust, constructive trust, trust coupled with a power.*

*Is a mortgagee exercising his power of sale a trustee for the mortgagor?*

An implied trust is a trust which is founded on an unexpressed but presumable intention. For an illustration, take the case of three pieces of land being settled and conveyed to A. and B. in fee upon trust to convey one piece to C. in fee, another to D. in fee, and another to E. in fee, as soon as and upon the condition that C., D. and E. respectively attain twenty-one years of age. C., D. and E. are aged thirteen, fifteen, and seventeen respectively. C. and D. attain twenty-one, but E. dies at eighteen. If there is no provision made for the latter event, A. and B. will hold the third piece of land upon trust for the settlor, or if he pre-deceased E., then upon trust for his heir or residuary devisee. For another illustration, read the case of *Dyer v. Dyer*, 2 Cox's Rep. 92; 1 Wh. & Tud. L. C. Eq. 223; Haynes's Student's Leading Cases, 317.

A constructive trust, as distinguished both from express and from implied trusts, may be defined to be a trust which is raised by construction of equity in order to satisfy the demands of justice without reference to any presumable intention of the parties. For an illustration, take the case of a trustee obtaining a renewal of a lease over the property of his *cestuis que trustent*. Although in such a case a renewal has been refused to any of the *cestuis que trustent*, the trustee will hold such renewed lease upon a constructive trust for his *cestuis que trustent*. (*Keech v. Sandford*, Select Cases in Chancery, 61; 1 Wh. & Tud. L. C. Eq. 46; Haynes's Student's Leading Cases, 304.) For another illustration, see *Mackreth v. Symmons*, 15 Ves. Rep. 329; 1 Wh. & Tud. L. C. Eq. 324; Haynes's Student's Leading Cases, 272.

A trust coupled with a power arises where the donor of a power



has shown a general intention in favour of a class and a particular intention in favour of individual members of that class to be carried out by the donee of the power. In such a case the donee has a power of selection which he may or may not exercise. If he does exercise it properly there is no need for the Court to interfere; but if he does not exercise it and there is no express provision made for such a case, the Court if invoked will treat the power as a trust, and carry into effect the general intention in favour of the class by dividing the unappointed property amongst the members of the class in equal shares, upon the ground of the equitable maxim "Equality is equity," or "Equity delighteth in equality." The most usual case where such a trust coupled with a power has occurred in practice is where property is settled upon the father for life, then upon the mother for life, and then upon trust for the children of the marriage as the father and mother may jointly appoint. There is usually, in modern settlements, a provision for the event of the father and mother dying without having appointed at all. See also *Harding v. Glynn* (1 Atkyn's Rep. 469; 2 Wh. & Tud. L. C. Eq. 962; Haynes's Student's Leading Cases, 261.)

A mortgagee is not a trustee for the mortgagor when he exercises his power of sale, except as to the balance (if any) of the purchase-money after the sale. (*Warner v. Jacob*, 51 L. J. Ch. 642.)

260. *How far does the Statute of Limitations apply to various kinds of trusts?*

*A. and B. are partners. After A.'s death B. receives sums belonging to the partnership, and more than six years after A.'s death, but less than six years after such receipt, an action is brought by A.'s representatives for an account of the profits of the partnership. Can the action be maintained?*

As regards *express* trusts, the Judicature Act, 1873 (s. 25 (2)) enacts that "no claim of a *cestui que trust* against his trustee for any property held on an express trust or in respect of any breach of such trust, shall be held barred by any Statute of Limitations."

The anomalous position of a creditor or legatee in whose favour his testator had created a trust for the payment of his debt or legacy respectively, or of a mortgagee or landlord where secured by an instrument in the form of a trust, has been swept away by

37 & 38 Vict. c. 57, s. 10, whereby since the 1st January, 1879, the fact of there being a trust gives them no longer time within which to enforce their claims than they would have had under the Statute of Limitations without the trust. (See Haynes's Student's Statutes, 2nd ed., 145.) The Statutes of Limitations, however, apply to *constructive* trusts by analogy, as explained in *Knox v. Gye*, (H. L.) 42 L. J. Ch. 234; L. R. 5 E. & L. App. 656. The facts in *Knox v. Gye* were similar to those stated in the question. It was there held that the right of A.'s representatives accrued on B.'s death, and that by analogy they are now barred, owing to the lapse of time provided in the Statutes of Limitation. (H. A. Smith's Equity, 85.)

261. *A sum secured by A.'s promissory note is bequeathed to C. and D. in trust for C.'s wife for life for separate use, with remainder for her children. C. delivered up the note to A., who had knowledge of the trust, in satisfaction of a private debt from C. to A. Twenty years afterwards C.'s wife discovers the transaction and brings an action against A. to recover the amount. Is she entitled to succeed?*

Inasmuch as strangers or third persons who are parties to a breach of trust make themselves equally liable with the trustee for the consequences of the breach, in this case A., knowing that the note was subject to a trust at the time he took it in discharge of his debt due from C. to him, was a party to a fraud, and was then liable to make good what he received. (*Rolfe v. Gregory*, 11 Jur. N. S. 98. See *Bridgman v. Gill*, 24 Beav. 302; Watson's Compendium of Equity, 906.) The only remaining question will be, has C.'s wife, by the lapse of time, lost the remedy which she once had? She has not; because she had no reasonable means of discovery of the fraud before she did discover it, and the Statute of Limitations does not commence to run in such a case until the date of the discovery. Since the discovery she has not acquiesced in the fraud. She is, therefore, entitled to succeed. (See *Gibbs v. Guild*, 51 L. J. Q. B. 228, and on App. 313; *Whalley v. Whalley*, 1 Mer. 436; *Trevelyan v. Charter*, 4 L. J. Ch. 209; Watson's Equity, 531.)

262. *State shortly the leading principles as to conveyances to persons, other than the actual purchaser, laid down in the case of Dyer v. Dyer.*

(1.) The clear result of all the cases without a single exception is, that the trust of a legal estate, whether freehold, copyhold, or leasehold; whether taken in the names of the purchasers and others jointly, or in the names of others without that of the purchaser; whether in one name or several, whether jointly or successively, results to the man who advances the purchase-money.

(2.) It is, however, also the established doctrine of a court of equity that this resulting trust may be rebutted by contrary facts proved by parol evidence. The cases go one step farther, and prove that the circumstance of one or more of the nominees being a child or children of the purchaser is to operate by rebutting the resulting trust; and it has been determined in so many cases that the nominee, being a child, shall have such operation as a circumstance of evidence, that we should be disturbing land-marks if we suffered either of these propositions to be called in question, *viz.*, that such circumstance shall rebut the resulting trust, and that it shall do so as a circumstance of evidence. (Lord Chief Baron Eyre, in *Dyer v. Dyer*, 1 Wh. & T. L. C. Eq. 223; Haynes's Student's Leading Cases, 317, 318.)

263. *A testator gives real and personal property to trustees upon trust to sell and convert, and after payment of certain legacies to hold the residue upon certain trusts which fail. What persons will be entitled to such residue, and whether as realty or personalty? What difference would it make if the testator directed that no part of the proceeds should, in any event, lapse or result to his heir-at-law?*

So much of the residue as consisted of real estate will devolve upon the residuary devisee (if any) under the will, or the heir-at-law if no residuary devisee, and so much of the residue as consists of personalty will devolve upon the residuary legatee (if any), or if no residuary legatee upon the next of kin as personalty. This is a case of partial failure of the objects of an equitable conversion, and is similar to the leading case of *Ackroyd v. Smithson* (1 Wh. & Tud. L. C. Eq. 949; Haynes's Student's Leading Cases, 167).

The heir-at-law cannot be disinherited by a mere direction that no part of the proceeds should in any event lapse or result to the testator's heir-at-law. It has been established over and over again

that in order to defeat the heir-at-law's claim to land on a total or partial intestacy there must be a devise of that land in favour of someone else by the deceased owner's will. (See *Fitch v. Weber*, 6 Hare, 146; Snell's Eq., 5th ed., 199; H. A. Smith's Equity, 434.)

264. *Where money is directed by will to be laid out in the purchase of real estate devised to uses which partly fail, who takes the undisposed-of interest, and is it taken as realty or personalty? When was the law as to the latter question settled?*

The residuary devisee (if any), or, if none, the heir-at-law. He takes it as personalty, and consequently on his death intestate the property in question will pass to his personal representatives. (This was settled by *Smith v. Claxton*, 4 Mad. 492; Haynes's Student's L. C. 169; Snell, 5th ed., 195—6; *Cogan v. Stevens*, 1 Wh. & Tud. L. C. Eq. 970; Haynes's Student's L. C. 170.)

265. *A. by will devised land to the use of B. for life, with remainder to the use of the first and other sons of B. in tail, and, in default of sons, to such uses as B. should appoint. B. dies without children, and without having exercised the power of appointment. Who is entitled to the land? What is the rule of law governing the point?*

The residuary devisee under A.'s will (if any) or A.'s heir-at-law. The rule of law is that A.'s will being ineffectual to dispose of A.'s whole interest therein, the land reverts to A. by way of a resulting use, and through A. to his residuary devisee or heir-at-law.

266. *In what way is a conveyance upon trust for creditors to be construed, and in what respects does it differ from an ordinary voluntary trust?*

*A. conveys an estate to trustees upon trust to realise and pay to certain scheduled creditors. A. informs some creditors of what he has done, but not others. Have the creditors any, and what, rights under the deed?*

It is construed merely as a direction to the trustees as to the method in which they are to apply the property vested in them for

the benefit of the owner of the property, who alone stands in the relation of *cestui que trust*, and can vary or revoke the trusts at his pleasure, so long as his creditors have not been made aware of it, and have not done anything to their prejudice upon the faith of it. The Court will not, therefore, at the instance of creditors who are looked upon, as above stated, as mere strangers, compel the trustees to execute the trusts for the payment of debts. It differs, therefore, from ordinary trusts so long as it is revocable. Where, however, such a conveyance has been acted upon, and according to some authorities if it is only communicated to the creditors, it can no longer be revoked by the grantor, since the creditors, being aware of such a trust, might be thereby induced to a forbearance in respect of their claims which they would not otherwise have exercised, and after which it would be unjust to disappoint them.

It is not clear upon the authorities whether the mere communication to the creditors by A. in the above case is sufficient to enable the creditors to take legal proceedings to enforce the performance of the trusts in their favour. The authorities, however, are clear that such creditors, unless they have by their own acts barred their own rights, can, if after being informed of the conveyance, and that they have done some act of forbearance or other like act upon the faith of it, take proceedings in the High Court (Chancery Division) to have the trusts administered under the direction of the Court. A creditor, however, who for a long time delays or refuses to execute the deed, and does not retract his refusal within the time limited, or if he sets up a title adverse to the deed, or has not performed all the fair conditions of the deed, or has taken any step inconsistent with such conditions, will not be allowed to claim the benefit of its provisions.

Those creditors to whom the above-named conveyance is unknown have no rights under nor are they prejudiced by the conveyance, and the fact of their names being mentioned in the schedule makes no difference. (H. A. Smith's Equity, 61—63.)

267. *A trader, previous to leaving England, vests property in a trustee upon trust to pay his debts, but makes no communication of the fact to his creditors. What are the rights of creditors under the deed, and are these rights in any way affected if the trustee is himself a creditor?*

The creditors to whom the existence of such a deed is not known have no rights thereunder. It is regarded, as it in truth is, as a conveyance of the debtor's property in the trustee for the debtor's own convenience, and the only *cestui que trust* is the debtor himself, by whom the deed is revocable at his pleasure, until his creditors are made aware of it and have done some act upon the faith of it which they would not have done if it had never existed. (See *Garrard v. Lauderdale*, 3 Sim. 1, and *H. A. Smith's Equity*, 61, 62.)

The deed of assignment is irrevocable as to a creditor who is trustee. (*Mackinnon v. Stewart*, 1 Sim. N. S. 88; *La Touche v. Earl of Lucan*, 7 C. & F. 772; *Montefiore v. Brown*, 7 H. L. Cas. 241—266; *Snell's Equity*, 5th ed., 94.)

---

#### VENDOR AND PURCHASER.

268. *You are instructed by a client to prepare conditions of sale with a view to sale by auction of an estate of which he is absolute owner, consisting of freeholds, copyholds, and renewable leaseholds. You find on investigating the title that your client acquired the copyholds and a portion of the freeholds under the will of his father (dated in 1838), who died in 1850, and that he enfranchised a portion of the copyholds in 1863; that he acquired another portion of the freeholds under an exchange effected in 1868, in exchange for some land of which he was seised in fee as heir-at-law of his uncle, who died in 1842; and that he acquired another portion of the freeholds by an award under an inclosure in 1852. The leaseholds are held under a lease which has from time to time been renewed on surrender of the prior lease, the last renewed lease having been granted in 1868. What conditions restrictive of the title to be shown would appear to you to be necessary?*

With regard to the freeholds acquired under the will, we should insert a condition preventing the purchaser from requiring any evidence of the vendor's father's possession at the time of his death, and state that there is no specific description of the property offered for sale, but the purchaser must be satisfied with the general description contained in the will, unless the purchaser wishes to

have a declaration by the vendor that he has held the property consistently with that description since 1850, at the purchaser's expense, which, if given, shall be conclusive evidence thereof.

With regard to the copyholds acquired under the will and afterwards enfranchised, no special provision need now be made, because by sect. 3 of the Conveyancing and Law of Property Act, 1881, the purchaser cannot, in the absence of a special provision in the conditions of sale, call for the title to make the enfranchisement. If the sale was made prior to 1st January, 1882, and there was no special condition to the contrary, the purchaser might not only call for the copyhold title which has been enfranchised, but to the title of the lord of the manor down to the time of the enfranchisement, except in the case where the enfranchisement was made under the Copyhold Acts, 1852 and 1858. The exchange having been made since 31st December, 1844, and most probably under the powers of the "General Enclosure Act, 1845," and the purchaser being at liberty, in the absence of an express agreement, to call for the title to the land given in exchange up to the date of the exchange, in addition to the title to the land taken in exchange after that date, we should preclude the purchaser from calling for the title to the land given in exchange, and make the award conclusive evidence of the exchange and the requisite consent having been given. With regard to the renewed lease of 1868, we should make that the commencement of the title to the property comprised in it, and preclude the purchaser from calling for any earlier title or any surrendered lease. (1 Prideaux, 11th ed., "Conditions of Sale.")

*269. Give an outline of the conditions usually inserted in conditions of sale of an estate comprising freehold, copyhold, and leasehold properties, showing the object of each condition.*

Clause 1. Biddings, and whether sale is with a reserve price, or vendors reserve their right to bid ; 2. Deposit ; 3. Timber on freeholds to be paid for at a valuation ; 4. Date for completion, as to payment of interest on purchase-money, and as to delivery of possession and payment of outgoings ; 5. Special conditions as to the commencement of title, and as to the other matters which the state of the respective titles may require provision to be made. 6. Pre-

cludes the purchaser from calling for evidence of earlier leases in the case of renewable leaseholds; 7. Delivery of abstract and commencement of each title; 8. Identity; 9. The properties are sold subject to easements, and as to apportionment of rents of two or more properties held under one lease. The copyholds are sold subject to the rights of the lord of the manor; 10. Errors in particulars not to annul the sale, but to be the subject of compensation; 11. Time for making requisitions; power for vendor to rescind in certain cases; 12. The vendor to execute proper assurances; 13. As to custody of deeds and acknowledgments and undertakings for their safe custody, &c.; and 14. Power for vendor to re-sell in case of purchaser's default. A memorandum to comply with the Statute of Frauds is added by indorsement. (1 Prideaux, 11th ed., 49.)

*270. What is the effect upon the legal position of the vendor and of the purchaser respectively of verbal declarations, made by an auctioneer at a sale, qualifying particulars and conditions of sale, which are afterwards duly signed?*

Written or printed conditions of sale cannot be verbally varied at the time of sale by the auctioneer, and parol evidence will not be admitted in equity on the part of the plaintiff to vary the written contract, although the purchaser agrees to abide by the conditions and declarations made at the sale. But any personal information which the purchaser may have received would be a ground for receiving parol evidence, and using the same as a defence against an application for specific performance. Fraud, mistake, or surprise, are respectively grounds for receiving parol evidence in defence to an application for specific performance, but if none of these circumstances exist, evidence cannot be offered to contradict, explain, or vary the written contract.

The particulars of sale should give an accurate description of the property, and no reliance should be placed by the vendor on statements made at the sale. (1 Prideaux, 11th ed., 32.)

*271. On a sale by auction of a freehold estate by order of trustees, one of whom is a married woman, the contract is signed by the*



*auctioneer as agent for the vendors, and by the purchaser. By whom can the contract be enforced? Give the grounds of your answer.*

The married woman can only bind real estate vested in her as trustee by deed acknowledged or some act in court in which she is put at arm's length from her husband, no matter what the other party may by her have been led to believe. (*Nicholl v. Jones*, 36 L. J. Ch. 554; L. R. 3 Eq. 696.)

In the above case, therefore, the contract cannot be enforced against the vendors, though the vendors can obtain specific performance against the purchaser, for it is binding on the latter, though the remedy would be unilateral. (*Avery v. Griffin*, L. R. 6 Eq. 606.)

The Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), however, now places a married woman in the position of a *feme sole* as to rights accrued to her since that Act.

272. *A. enters into an open contract for sale to B. of land held for a term of 999 years under a lease granted in 1669. What title is B. entitled to require?*

B., in the absence of stipulation to the contrary, is entitled to require production of the original lease made in 1669 and all instruments dealing with it for the last forty years, and on completion he will be entitled to require their delivery to him unless they relate to other property than that sold. (See 37 & 38 Vict. c. 78; Haynes's Student's Statutes, 2nd ed., 174.)

273. *A purchaser of land takes a conveyance in fee comprising the usual covenants for title, but after being in possession some time he discovers that the vendor was not entitled in fee, but only as tenant in tail, and is now of unsound mind, though not so found by inquiry. Can the purchaser take any and what steps to complete his title, including enrolment?*

The purchaser can treat the conveyance as a disentailing assurance withing the meaning of 3 & 4 Will. IV. c. 74, s. 40, and enrol it in the Enrolment Office, Royal Courts of Justice, provided it is enrolled within six calendar months after execution. (See Haynes's Student's Statutes, 2nd ed., 89, 90.)

We assume that the vendor is now wholly *non compos mentis*.

The Trustee Acts, 1850 and 1852, would not apply to such a case if the six months have expired. The only course open to the purchaser, if the six months have expired, is to petition either the Lord Chancellor, the Master of the Rolls, or one of the Lords Justices appointed under the Queen's Sign Manual, to exercise the jurisdiction in lunacy vested in the Crown and issue a writ of *de lunatico inquirendo*, whereupon, after due enquiry, the vendor will be found a lunatic from a certain date and a committee appointed who, subject to the leave of the Lord Chancellor, the Master of the Rolls, or one of the Lords Justices as aforesaid, can execute the further assurance required under 3 & 4 Will. IV. c. 74, s. 38, to confirm the purchaser's title. (See Lunacy Regulation Act, 1853, 16 & 17 Vict. c. 170, s. 124, and *Re Pures*, L. R. 12 Ch. 333; L. J. Digest, 1875—1880, 347; Elmer's Lunacy, 6th ed., 5; the Lunacy Orders, 1883.)

274. *A purchaser, on the completion of his purchase, pays his purchase-money to the vendor, obtains the title deeds, and enters into receipt of the rents and profits of the purchased property, but obtains no conveyance. Another purchaser of another property from the same vendor takes his conveyance, and enters into receipt of the rents and profits, but does not obtain the title deeds. The vendor subsequently sells both properties to a third party who has no notice, handing over to him the deeds in his possession. Discuss the position of the two original purchasers as regards their rights and remedies in relation to the properties respectively purchased by them.*

The first purchaser will be without a remedy if the third party *bonâ fide* enquired for the title deeds and a reasonable excuse for their non-production was given to him, as was done in the case of *Agra Bank, Limited v. Barry* (L. R. 7 E. & I. App. 135), for then no Court would impute fraud or gross and wilful negligence to the third party; and the first purchaser not having had a conveyance cannot have the legal estate, which passed to the third party by the conveyance to him on the subsequent sale. If, however, the third party made no enquiry for the title deeds, or in some way received actual or constructive notice of the title deeds being in the first purchaser's hands or not in the vendor's hands, he (the first purchaser) will have a charge in equity on the property by the

deposit which he will be entitled to enforce by commencing an action in the High Court of Justice (Chancery Division), and the third party will under the conveyance to him then only obtain the property subject to such charge in his favour. The second purchaser has the legal estate, which draws with it a right to the delivery of the title deeds in the grantor's possession at the time of the conveyance, and therefore can claim the delivery of the title deeds from the third party, who has obtained no charge thereon (see *Bassett v. Nosworthy*, 2 Wh. & Tud. L. C. Eq. 1; Haynes's Student's Leading Cases, 276), and the Chancery Division will not now, like the old Court of Chancery, refuse to interfere with the third party's possession of the deeds because he obtained them for value and *bonâ fide*. (See recent case: *Re Cooper, Cooper v. Vesey*, 51 L. J. Ch. 149).

275. *On the completion of a purchase of real estate, what searches should be made for the protection of a purchaser against incumbrances? What are the most recent Acts of Parliament which govern the necessity for such searches, and what is the effect of those Acts?*

Searches should be made for (1) judgments, which a purchaser should search for at the Royal Courts of Justice (Central Office) in the vendor's name, and which search should be carried back for a period of five years, which will in most cases be sufficient. The purchaser should also search in the vendor's name for executions issued and registered against him within the last five years, and should require the release or satisfaction of any judgment upon which he shall find a writ of execution to have been so issued and registered. Unless there are very special grounds for suspicion against a former owner or owners, the search is in practice only made against the vendor, even in the case of sales under the direction of the Court. The statutes governing this subject are the Statutes of Westminster: 1 & 2 Vict. c. 110; 2 & 3 Vict. c. 11; 3 & 4 Vict. c. 82; 18 & 19 Vict. c. 15; 23 & 24 Vict. c. 38; and 27 & 28 Vict. c. 112.

And for (2) Crown debts. The purchaser should search at the same place for Crown debts against the vendor for the five years immediately preceding the completion of the purchase. He should

also search in the same office for registered extents and execution upon Crown debts obtained subsequently to that date. The Acts on this subject are 2 & 3 Vict. c. 11, and 22 & 23 Vict. c. 35.

And for (3) *lites pendentes* against the vendor at the same place for the same period, as *lites pendentes* do not bind a purchaser or mortgagee, *without express notice thereof*, unless registered and re-registered every five years. The Act on the subject is 2 & 3 Vict. c. 11.

And for (4) annuities and rent-charges. The purchaser should search at the same place for the *whole* period (not five years only) since the Registry has been established, *viz.*, 1855, and in the absence of special grounds for suspicion against the vendor only, and not against the former owners.

If the property is situate in a palatine county, the registry attached to the Palatine Court should also be searched for five years.

If the purchaser has any grounds to suspect that the vendor has filed a liquidation petition or been made a bankrupt, a search should be made at the London Bankruptcy Court, where the London and Country Rolls are kept.

A search should also always be made in the Local (as in Middlesex or York) Registry (if any), and at the Land Registry Office if a rent-charge may have been created under the powers of the Improvement of Land Act, 1864. (See 27 & 28 Vict. c. 114; 33 & 34 Vict. c. 56; and 38 & 39 Vict. c. 8, s. 123.) (1 Prideaux, 11th ed., pp. 143—169. And see now in the Conveyancing Act, 1882 (45 & 46 Vict. c. 39), as to certificates of results of official searches pursuant to requisition.)

276. *What is the doctrine of lis pendens, and on what principle is it founded?*

A person who purchases during the pendency of a suit relating to the subject of his purchase, is bound by the decree that may be made against the person through whom he derives title, whether he has notice of the pending proceedings or not; in other words, neither party to a litigation can alienate the property in dispute so as to affect his opponent. The doctrine of *lis pendens* is founded, not upon any peculiar principles of a court of equity as to implied

or constructive notice, but was common to courts both of law and equity, and rests upon this foundation, that it would be impossible that any action or suit could be brought to a successful termination if alienations *pendente lite* were permitted to prevail. (1 *Prideaux*, 11th ed., 165.)

277. *State concisely the doctrine of equity as regards the defence of a purchase for value without notice, and how such defence should be raised. Can the legal mortgagee of an estate maintain an action for foreclosure against a purchaser of the estate for valuable consideration without notice?*

The defence to an action brought to recover property from the defendant, that the defendant either has the legal estate or has even the best right to call for the legal estate in such property, and that he acquired such estate or such best right to call for such estate as a *bond fide* purchaser for value, without having had either actual or constructive notice of the plaintiff's claim, arises out of the maxim, "Where there is equal equity the law must prevail." When this defence is pleaded and proved, the Court before which the action is tried will grant the plaintiff no relief against the defendant, however just the plaintiff's claim may be, and in so doing it acts consistently with the result of human experience. For an illustration read the leading case of *Bassett v. Nosworthy*, Rep. t. Finch, 102; 2 Wh. & Tud. Eq. 1; Haynes's Student's Leading Cases, 276; and see *Phillips v. Phillips*, 10 W. R. 237; 31 L. J. Ch. 321; *Wilmot v. Pike*, 5 Hare, 14; and Snell's Equity, 5th ed., 25—34.

This defence must be pleaded specially in the statement of defence.

That a person is a purchaser for value without notice is no defence whatever to the claim of a legal mortgagee, for the legal estate can only exist in one person at the same time, and therefore the purchaser cannot have anything more than an equitable estate, and then upon the maxim, "Where the equities are in all other respects equal the law shall prevail"; the plaintiff's claim will prevail over the defendant's. (See the recent case of *Pugh v. Heath* (C.A.), 50 L. J. Q. B. 473; L. R. 6 Q. B. D. 345; (H.L.) 51 L. J. Q. B. 367. See another case where this defence was raised: *Kettlewell v. Watson*, 51 L. J. Ch. D. 281; and for another where

mortgagees for value without notice were ordered to deliver up the title deeds: *Re Cooper, Cooper v. Vesey*, 51 L. J. Ch. 862.) As to constructive notice, see Conveyancing Act, 1882 (45 & 46 Vict. c. 39.)

278. *State cases in which a purchaser would be responsible to see to the application of the purchase-money, and cases in which he would not be responsible, explaining in each case why the responsibility arises or why the purchaser is exempt from responsibility.*

Owing to sect. 36 of the Conveyancing Act, 1881 (which is general and retrospective), and sect. 40 of the Settled Land Act, 1882, a purchaser from a trustee or trustees is in no case responsible to see to the application of the purchase-money. The reason is because such purchaser is indemnified by the provisions of the above-mentioned Acts. The only exception is where the purchaser is cognisant of or party to a fraud being practised by the selling trustee.

In the case of executors, a purchaser from them is under no such responsibility, unless (1) the estate sold is to the purchaser's knowledge clothed with such a particular trust that the purchaser is in the position of an implied trustee to see to the application of the purchase-money; or (2) the purchaser is party to or cognisant of a fraud being perpetrated by the executors in selling; or (3) in any case where more than twenty years have elapsed since the testator's death, and the executors are attempting to exercise their implied power of sale for the alleged purpose of paying the debts of the deceased, and no debts are proved to the purchaser's satisfaction to be in existence. (See *Tanqueray, Willaume and another to Landau*, (C. A.) 51 L. J. Ch. 434.)

The only remaining cases that can arise (except in the case of purchases from mortgagees under statutory power of sale, as to which see sect. 22 of 44 & 45 Vict. c. 41) would be where the vendor is a beneficial devisee or legatee of freeholds, copyholds or leaseholds charged by the will with certain legacies or annuities, or the vendor of any such property (not acquired by will) charged with payment of any sum or sums by way of mortgage or otherwise; in all such cases the purchaser is responsible if he does not, as he ought, obtain a release of the property to be conveyed from the person or persons in whose favour the legacies, annuities, or other sum subsists.

The above question was asked in June, 1880, when the law on the subject was governed by the case of *Elliott v. Merryman*, 1 Wh. & Tud. L. C. Eq. 64; Haynes's Student's L. C. 271, as altered by 22 & 23 Vict. c. 35, and 23 & 24 Vict. c. 145, which latter statute is repealed by the Conveyancing Act, 1881, and the Settled Land Act, 1882. (For fuller information see H. A. Smith's Equity, 293 *et seq.*)

279. *Can the seller of goods which he has stolen under any, and, if any, what circumstances confer a good title upon a bonâ fide purchaser; and is there any, and, if any, what case in which the true owner may recover them from such bonâ fide purchaser? Refer to any statute on the subject.*

Yes, he may make a valid sale if between sunrise and sunset in market overt to a *bonâ fide* purchaser who does not know that the goods are not the seller's property.

If they are stolen or obtained from the true owner by false and fraudulent pretences, and the offender is convicted, they re-vest in the owner on conviction, and the true owner may recover them from any person, even a purchaser for valuable consideration, without notice who has them in his hands or under his control at the time they are demanded by the true owner. But persons who buy them *bonâ fide* in market overt, and sell them again before the conviction, even with notice that they were stolen, cannot be sued for the value of them. (Smith's Man. Com. Law, 8th ed., 219.) See also 7 & 8 Geo. IV. c. 29, s. 57; but the statute referred to in the question is probably the Larceny, &c., Act, 24 & 25 Vict. c. 96, s. 100, which gives the Court before whom the felon is tried power to award summarily a writ of restitution to the owner except under special circumstances. (See Haynes's Student's Statutes, 2nd. ed., 377, 378.)

280. *Sale of specific goods by sample. What does such a sale imply? On delivery of the bulk it is found not to be equal to sample. What remedy has the purchaser? and what is the measure of damages?*

Such a sale implies a warranty on the part of the vendor that

the sample is a fair specimen of the bulk, and that the bulk shall reasonably correspond in nature and quality with the sample.

If the bulk is not found to reasonably correspond with the sample, the purchaser can (1) refuse to receive the bulk, or, having received it, he can decline to keep the bulk if he has done no more than give the goods a fair trial. If he has adopted the latter course the purchaser need only give the vendor notice that he rejects them for the above reason, and that the goods will henceforth remain on the purchaser's premises at the vendor's risk and disposition, and that the purchaser abnegates all liability and responsibility in respect of the bulk, or to that effect. Then the purchaser is not bound to return the bulk or offer to do so. (*Grimoldby v. Wells*, 44 L. J. C. P. 203; L. R. 10 C. P. 391; and see *Heilbutt v. Hickson*, 42 L. J. C. P. 59; L. R. 8 C. P. 131); or (2) the purchaser can receive the bulk and either set up the breach of the above implied warranty in mitigation of the plaintiff's claim for the price, or, if he has paid the vendor the price, he can sue him by an independent action for the damages for breach of the implied warranty. If he adopts this course the purchaser need not give the vendor notice of the breach of warranty nor offer to return the goods, although it is always advisable to do so, because the purchaser, by giving the notice or making the offer above mentioned, prevents any possible presumption being raised, by his neglect to do so, that the goods had not the defect complained of at the time of sale. In an action for breach of warranty the measure of damages is the difference between the contract price and the sum proved to be the true market value of the bulk. The true market value is usually shown by proving the price obtained on a resale by the purchaser within a reasonable time. If there is no difference in the contract and market prices, or the purchaser made a profit on the resale, he is entitled to nominal damages on proving the breach. (Chitty on Contracts, 10th ed., 414, 419, 420, 425.)

281. *Contract for sale of a parcel of starch (weight unascertained) at, say, £5 per cwt. The seller directed his warehouseman to weigh and deliver it. Part is weighed and delivered, and then the buyer becomes bankrupt. Seller stops the weighing and delivery of the remainder, whereupon buyer's trustee in bankruptcy brings an action*



*of trover for the undelivered portion. Can such an action be maintained? Give reasons for your answer.*

Assuming that all the purchase money had not been paid or tendered by either the purchaser or his trustee at the time of the seller stopping the weighing and delivery of the goods, the seller was within his rights in so acting, and is not now bound to weigh and deliver any further goods to the trustee without payment of the price of the starch already weighed and delivered, together with the price of the starch to be weighed and delivered by the vendor in order to complete his part of the contract. (*Re Phoenix Steel Co., Ex parte Carnforth Iron Co.*, 46 L. J. Ch. 115; L. R. 4 Ch. 108. Baldwin's Bankruptcy, 60.)

Upon the same assumption, the trustee cannot bring an action of trover, for such an action requires the right to *present* possession to support it. (*Bloxam v. Sanders*, 4 B. & C. 941; *Bradley v. Copley*, 1 C. B. 685; 14 L. J. C. P. 222; *Gordon v. Harper*, 7 Term Rep. 9.) And the right to the *present* possession the trustee cannot have until he has paid or tendered the price, as above stated, and thus determined the vendor's lien. (*Lord v. Price*, 43 L. J. Exch. 49.) If the vendor has been fully paid, the trustee's only remedy will be an action for damages for breach of contract against the seller.

---

## WILLS.

282. *What were the principal changes in the law relating to wills effected by the Wills Act, 1 Vict. c. 26?*

(1.) *As to execution and attestation.*

Prior to 32 Hen. VIII. c. 1, a will of personal property was good though not in writing, such a will being called nuncupative, and if it was in writing it did not require to be signed or attested, nor need it even be in the testator's handwriting. It was necessary that he should publish it, that is, declare it to be his will, and that was all. Such continued to be the law as to personal property until the Wills Act, with the exception of some provisions in the Statute of Frauds, which placed nuncupative wills under certain severe restrictions. 32 Hen. VIII. and 34 Hen.

VIII. required a will of realty to be in writing, but there were no provisions about signature or attestation. The Statute of Frauds, however, required a will of realty to be in writing, signed by the testator or some other person in his presence and by his direction, and attested in his presence by at least three competent witnesses. But a person who got a legacy, and a creditor where there was a charge of debts or legacies on real property, were held not to be credible, and a will attested by such was invalid, until it was provided by a statute of Geo. II. that creditors should be competent witnesses and that legatees should be so too, but that the latter should not obtain their legacy; but this Act did not extend to a gift to the wife or husband of a witness, and a gift to either of them still rendered the will void. The Wills Act now provides (and it applies to testaments of every description of property, placing them all on the same footing) that no will shall be valid (with the exception of nuncupative wills of personal estate made by sailors at sea and soldiers on active service) unless in writing, and signed at the foot or end thereof by the testator or by some other person in his presence and by his direction (the Statute of Frauds allowed the signature to be anywhere), and unless such signature shall be made or acknowledged by the testator in the presence of two or more competent witnesses present at the same time (the Statute of Frauds required them to sign in the testator's presence, but was content if they themselves signed at different times), and unless such witnesses attest or subscribe the will in his presence. The Wills Act also provides that the incompetency of any attesting witness shall not invalidate the instrument, but that any beneficial gift to an attesting witness or to the husband or wife of one (except a charge for the payment of debts, when, if one of the witnesses is a creditor, or the husband or wife of a creditor, he or she can take the benefit of such charge) shall be void, and the evidence of the witness admissible; and, lastly, that an executor can be a witness.

(2.) *As to revocation.*

(a.) Under the Statute of Frauds any new modification of interest achieved a revocation; but by the Wills Act a will does not become invalid by any alteration of circumstances, except—

(b.) By marriage. In this respect the former law has been changed, for the Statute of Frauds, though it allowed a revocation

by marriage alone in the case of a female, yet it made the birth of a child also requisite in that of a male. But marriage will not revoke a will when made in the exercise of a power of appointment when the estate in default would not have passed to the heir or personal representative of the person having the power.

(c.) If a second will or instrument of revocation is itself revoked, the prior one will not revive *ipso facto* as under the old law, but the testator will die intestate; for nothing but the re-execution of the original, or a codicil duly solemnised, will now effect a revival.

(d.) If the testator has disposed of the property to which the will relates, or if by any means it ceases to exist, the will is *ipso facto* revoked. There is this difference, however, between the old and the new law, that should it again come into his possession, and continue to be so at his death, by the Wills Act the disposition will take effect; while under the law as laid down by the Statute of Frauds it would not have done so, for then the will spoke from its date, and did not pass subsequently-acquired property, to effect which a fresh will was necessary.

(3.) *As to construction.*

(a.) A will now speaks from the death of the testator, but under the Statute of Frauds it spoke from the date.

(b.) Under the former law there was in every case a lapse if the devisee died before the testator. But now there is no lapse where the legatee or devisee, being a child or other issue of the testator, shall die in the lifetime of the testator leaving issue, and such issue shall be living at the death of the testator. It is further provided that if an estate tail is left to any one, a stranger or otherwise, and the donee dies in the testator's lifetime, leaving issue inheritable under the entail, who are living at his death, there shall be no lapse, and the issue shall take.

(c.) Under the old law lapsed or void devises would not pass under a residuary devise, but went to the heir at law, as having been undisposed of. Under the new Act all lapsed and void devises fall into the residue.

(d.) Under the old law a devise by a testator who had a lease for years but no freehold would have passed the lease, but if he had a freehold the lease would not have passed; under the Act, however, a devise of a man's land will include freeholds, copy-

holds, and leaseholds, unless a contrary intention appears in the will.

(e.) Under the old law, where a person had an estate in land, and was also entitled, by virtue of a power conferred on him for that purpose, to appoint other lands by will, the appointed lands would not pass under a general devise; but in the event of his having no estate the appointed lands would pass. But since the Act the appointed lands will pass irrespectively of his having realty of his own or not, unless a contrary intention appears by the will.

(f.) A fee simple could always be given by will (since wills of realty were permitted) without the use of the word "heirs;" yet before the new Act some words indicative of an intention to pass the entire interest were required. But now nothing of the kind need be used; a devise to A. will, in the absence of a contrary intention, give A. the largest interest which the testator could have given him, whereas under the former law he would merely have become possessed of a life estate.

(g.) Under the old law the words "dying without issue" signified an indefinite failure of issue. But by the Wills Act they mean a failure of issue in the lifetime or at the death of the devisee, and not an indefinite failure of issue, as formerly, unless a contrary intention appears by the will. (Shearwood's Real Property, 140—146; Haynes's Student's Statutes, 2nd ed., 228—232.)

283. *Who is entitled to the residue remaining undisposed of by the will of a testator, who is himself filius nullius and dies a bachelor? What is the general law as to undisposed-of residue, and how was it affected by Lord St. Leonard's Act (11 Geo. IV. & 1 Will. IV. c. 40)?*

So far as the residue consists of personal estate, the executor will be entitled as against the Crown and all the world absolutely. (*In re Knowles*, *Roose v. Chalk*, 49 L. J. Ch. 625.) If there is no executor the administrator will hold it subject to the debts in trust for the Crown, unless it happens to be vested in any person or persons as trustee or mortgagee. If it is vested in any person or persons as trustee or mortgagee, then such trustee or mortgagee will be entitled to the residue beneficially, subject to the testator's

debts, as against the Crown and all the world in such a case as the above. If in such a case as the above the testator dies possessed of a residue comprising real estate without having devised it, and it is not vested in anyone else as trustee or mortgagee, it will escheat to the Crown for want of heirs. (See Snell's Equity, 5th ed., 131.)

Prior to the passing of 11 Geo. IV. & 1 Will. IV. c. 40, the executor under the will was, subject to the debts, beneficially entitled at law to any residue of the personal estate not disposed of by the will, unless there was a contrary intention shown in the will. The 11 Geo. IV. & 1 Will. IV. c. 40, enacts, however, that every executor shall be deemed to be a trustee for the testator's next of kin in respect of any such undisposed of residue unless a contrary intention shall appear by the will, *i.e.*, that he shall take beneficially. (See Haynes's Student's Statutes, 83; Snell's Equity, 5th ed., 132.)

284. *A testator makes the following will: "I give all my property of every kind to my two sons, A. and B." A. and B. are testator's only children. A. dies in testator's lifetime, a bachelor and intestate. B. survives A., but dies in testator's lifetime, leaving children, and having by his will given all his property to his widow. The testator dies possessed of real and personal estate. Who is entitled thereto? Give the grounds of your answer.*

The widow. A devise or bequest to or for the benefit of two or more persons *simpliciter* makes them joint tenants (*Morley v. Bird*, 3 Ves. 629; *Crooke v. De Vandes*, 9 Ves. 197; *Swann v. Burton*, 15 Ves. 365; *Armstrong v. Armstrong*, L. R. 7 Eq. 518; *Watson's Compendium of Equity*, vol. 1, p. 453), and therefore A. and B. in the above case will take as joint tenants. On the testator's death his property will consequently devolve upon the survivor of them, *i.e.*, B., if he, B., survives the testator. In this case he does not, and, therefore, if there were no statute providing for such a case as this, B.'s share would lapse. Sect. 33 of the Wills Act (1 Vict. c. 26; Haynes's Student's Statutes, 2nd ed., 232) prevents a lapse, because B. is a child of the testator, who dies in his father's lifetime, leaving issue living at the testator's death, and if these conditions precedent are not wanting, the section

provides, that "such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will." Now, if B. had outlived the testator and then died, his will would be valid, and the effect of this section is to make it valid, and, therefore, to pass B.'s interest in the whole of the testator's property to his widow. That section does not substitute for the deceased devisee or legatee the issue whose existence is the event or condition which prevents the lapse, but renders the subject of the gift the absolute property of the deceased devisee or legatee, and disposable by his will, notwithstanding his death before the testator. (2 Prideaux, 9th ed., 386.)

285. *Certain property is limited by settlement upon trust for A. for life, and if she should survive B., her husband, for her absolutely; but if she should die first, then upon trust for B. for life, and after his decease for such persons as A. should by will, notwithstanding coverture, appoint. A., in B.'s lifetime, makes her will, by which she appoints the settled fund to C., and gives him all her property. A. survives B., and dies, being also possessed of certain estate settled to her separate use, and of property to which she becomes entitled under B.'s will. How far is A.'s will operative?*

As regards the settled property, when her husband died in her lifetime it stood limited to her absolutely. The will she had previously made during coverture was only effectual, without her husband's consent, to pass property over which she had a sole power of appointment, and property settled to her separate use without any restraint on anticipation. The husband's consent was revoked by his death. The will was not revived by re-execution or a codicil. A.'s will, therefore, is inoperative as regards the settled property.

The property settled to her separate use will pass under the will if there is no restraint upon anticipation. (*Taylor v. Meads*, 4 De Gex, J. & S. 597; 34 L. J. Ch. 203; 13 W. R. 394.)

Assuming the married woman's property is not made separate estate by 45 & 46 Vict. c. 75, the property acquired by A. under B.'s will subsequently to the date of her will will not pass under

her will, for the will of a married woman in that case practically speaks from its date, and forms the only exception to the rule that a will speaks and takes effect from the death of the testator. This has arisen from various causes. A married woman before the Act of 1882 (45 & 46 Vict. c. 75) could only make a will during coverture, which would be admitted to probate without her husband's consent in the two cases above mentioned and some few others. The Wills Act (1 Vict. c. 26) has not enlarged her powers of making a will. (See sect. 8.) As regards property acquired by married women after the 31st December, 1882, a married woman's will will pass all property acquired after as well as that acquired before its date, provided the date of the actual vesting thereof is not prior to the coming into operation of the Married Women's Property Act, 1882. (See *Willock v. Noble* (H. L.), 44 L. J. Ch. 345; L. R. 7 E. & I. App. 580.)

286. *A testator bequeaths all his money to A., all his securities for money to B., and his general residue to C. He dies possessed of cash, money at his bankers on current account and deposit, cheques, promissory notes, bills of exchange (some indorsed in blank, some fully indorsed), book and other debts, mortgages, Government stocks, bank stock, railway shares and stocks, and policies of insurance on his own life. To which of these are A. and B. respectively entitled?*

Unless, of course, the testator shows by his will a clear intention to give to the words "money" and "securities" respectively a meaning different from what is ordinarily attached to those words A. and B. will respectively be entitled as follows:—

A. will be entitled to (1) the cash; (2) money at his bankers on current account and deposit (*Vaisey v. Reynolds*, 5 Russ. 12; *Parker v. Marchant*, 1 Ph. 356; *Byrom v. Brandeth*, 42 L. J. Ch. 824; L. R. 8 Ch. 475; *Collins v. Collins*, 40 L. J. Ch. 541; L. R. 12 Eq. 455); (3) the money payable under the policies of insurance on his own life (*Petty v. Willson*, L. R. 4 Ch. 574); (4) book and other debts (*Byrom v. Brandeth*, *supra*). B. will be entitled to (1) the mortgages and mortgage debts (*Dicks v. Lambert*, 4 Ves. 725; *Ogle v. Knipe*, L. R. 8 Eq. 434); (2) the promissory notes, bills of exchange, whether indorsed in blank or fully indorsed

(*Barry v. Harding*, 1 J. & Lat. 475); (3) the Government stocks (*Bescoby v. Pack*, 1 S. & S. 500). C. will be entitled to (1) bank stock and (2) railway shares and stocks. (*Ogle v. Knipe*, *supra*; Watson's Compendium of Equity, vol. 2, 1228—30.)

As to the cheques mentioned in the question, if they are immediately convertible into money at the death of the testator, A. will be entitled to them; if not, they will go to B. (See *Byrom v. Brandeth*, *supra*.)





## PART II.

THE LAW, PRACTICE AND PROCEDURE IN CRIMINAL CASES ;  
IN THE PROBATE, DIVORCE, AND ADMIRALTY DIVISION ;  
AND IN ECCLESIASTICAL LAW.

---

### CRIMINAL LAW.

1. *Assume an act to have been committed which would, prima facie, constitute a crime. What exceptions, attaching either to the person by whom, or the circumstances under which, it was committed, may deprive it of the character of a criminal offence ?*

*A. in a fit of delirium tremens, the immediate result of drunkenness, kills B., mistaking him for a wild animal. Has A. committed a crime ?*

To constitute a crime there must be two elements present, viz. :—  
(1) A criminal intention or malice, and (2) will. It follows that the absence of either or both of these will deprive a *prima facie* offence of its character of being a criminal offence, and form the exceptions above referred to.

These may be classified as follows :—

1. Absence of criminal intention or malice, including :—  
Insanity : Infancy : Ignorance (mistake).
2. Absence of will, *i.e.*, the act is purely involuntary :—  
Misfortune, &c. : Physical compulsion.
3. Instant and well-grounded fear, stronger than the fear naturally inspired by the law :—  
Fear of excessive unlawful harm. Coercion of married women.

4. When an act under ordinary circumstances criminal is denuded of that character, inasmuch as it is directly authorised by the law :—

In pursuance of a legal duty, *e.g.*, the sheriff hanging a criminal.

In pursuance of a legal right, *e.g.*, slaying in self-defence.

Here, as in the first class, there is no criminal intention. (Harris' Criminal Law, 19, 20.)

Drunkenness, sometimes termed *dementia affectata*—acquired madness—is, when voluntary, no excuse for a crime committed in that state. It is, however, sometimes an index of the quality of the act done. When it is involuntary, as, for example, if it be by the contrivance of the prisoner's enemies, he will not be accountable for his actions while under that influence. (Harris' Crim. Law, 25 and 26.) Accordingly, in the above case, if A. has voluntarily made himself drunk, he is guilty of the manslaughter of B. Otherwise he will be acquitted. Even if guilty he will not be guilty of murdering B. unless the circumstances prove the necessary "malice aforethought."

2. *Force is used by A. against the person of B. in obedience to orders given to A. by a civil or military superior. Upon what considerations will the question whether or not A. has been guilty of a criminal offence depend? Illustrate your answer by an example.*

To constitute an act a criminal offence, the law of this country requires, as stated in the preceding answer, the presence of both *criminal intention*, or *malice*, and the *will*. If either of these is wanting in any given act, no crime has been committed. A., in the above case, will not be guilty of a crime if he can show a defect of the will on his part on the ground of his obligation to civil subjection to his civil or military superior, and coming within a general class of acts committed by A. from compulsion and inevitable necessity. A. must also be ready to show that the injury done to B. was in strict compliance with his superior's orders. An instance of such a case would be when the legislature establishes iniquity by a law, and commands the subject to do an act contrary to religion or sound morality. Obedience to the laws in being is undoubtedly a sufficient extenuation of civil guilt before the municipal tribunal. The sheriff who burnt Latimer and Ridley in

the bigoted days of Queen Mary was not liable to punishment from Queen Elizabeth for executing so horrid an office, being justified by the commands of that magistracy which endeavoured to restore superstition under the holy auspices of its merciless persecution.

As to persons in private relations the principal case, where constraint of a superior is allowed as an excuse for criminal misconduct, is with regard to the matrimonial subjection of the wife to her husband, for although neither a son nor a servant is excused for the commission of any crime, whether capital or otherwise, by the command or coercion of the parent or master, yet, in some cases, the command or authority of the husband, either express or implied, will privilege the wife from punishment; and, therefore, if a woman commit theft, burglary, or other civil offences against the laws of society by the coercion of her husband, or even in his company, which the law construes a coercion, she is not guilty of any crime, being considered as acting by compulsion and not of her own will. This doctrine is at least a thousand years old in this kingdom. But no impunity is given to servants, who are as much free agents as their masters; and, even with regard to wives, this rule admits of an exception in the case of treason, murder, man slaughter, or robbery, these offences being of a deeper dye. In misdemeanours also we may mention another exception, that a wife may be indicted with her husband for keeping a brothel; for this is an offence touching the domestic economy or government of the house in which the wife has a principal share, and is also such an offence as the law presumes to be generally conducted by the intrigues of the female sex; and in all cases where the wife offends alone, without the company or coercion of her husband, she is responsible for her offence as much as a *feme sole*. (4 Stephen's Commentaries, 104, *et seq.*; Harris' Criminal Law, 12, *et seq.*; Broom's Commentaries on Common Law, 869.)

3. *Enumerate the different acts which constitute the offence of an accessory after the fact to felony. Of what degree of offence is such an accessory guilty, and to what punishment does he render himself liable?*

*A. commits a felony, and is afterwards received and assisted to escape from justice by his wife and brother, both of whom are aware*

*of the commission of the felony. Are the two latter, respectively guilty of any criminal offence?*

An accessory after the fact is one who, knowing a felony to have been committed by another, receives, relieves, comforts, or assists the felon.

The different acts which constitute that offence are—

- (a.) There must have been some felony committed and completed.
- (b.) The person charged must have had notice, direct or implied, at the time he received, relieved, comforted or assisted the felon, that he had committed a felony.
- (c.) The person charged must have done some act to assist the felon personally.

It will suffice if there has been any assistance given in order to hinder the felon's apprehension, trial, or punishment; for example, concealing him in the house, supplying him with horse or money to facilitate his escape; but merely suffering the principal to escape will not make the party an accessory after the fact.

An accessory after the fact to a felony may be tried in the same manner as an accessory before the fact; that is, either as an accessory with the principal, or after his conviction, or as for a substantive felony, independently of the principal. He is in general punishable with imprisonment for any term not exceeding two years (with or without hard labour), and may also be required to find security for keeping the peace, or in default to suffer additional imprisonment for a period not exceeding one year. But an accessory after the fact to murder may receive sentence of penal servitude for life, or for any shorter term not less than five years or imprisonment not exceeding two years. Accessories before the fact, it may be mentioned, receive the same punishment as principals. As a wife cannot be found guilty as an accessory after the fact when she assists her husband after he has to her knowledge committed a felony, it follows that in the above case the wife is guilty of no criminal offence. The brother will, however, be guilty as an accessory after the fact. (See Harris' Criminal Law, 36—39; 4 Stephen's Commentaries, 41, 42; 1 Hale P. C. 618, &c.)

*4. Define accessories before and after the fact. Do all crimes admit of accessories?*

*A. counsels B. to rob C., who is expected to pass by, in the dark. D. comes instead, and is attacked by B., and in the struggle is killed, and A., on being informed of it, assists B. to conceal the body. What is A.'s crime?*

An accessory before the fact is one who, being absent at the time when the felony is committed, yet procures, counsels, commands, or abets another to commit a felony. An accessory after the fact, as before stated, is one who, knowing a felony to have been committed by another, receives, relieves, comforts, or assists the felon.

There are no accessories in treason or misdemeanour, only in felonies.

A. is guilty as an accessory both before and after the fact to the murder committed by B., and would probably receive the same punishment as B. An accessory is responsible for all the probable consequences which follow upon the execution of the unlawful act commanded. It makes no difference to a prisoner in a criminal trial, except perhaps as to the amount of punishment to be awarded, that the results of the steps he has taken to carry out his intentions are other than those he anticipated or intended, provided there be present (1) a criminal intention and (2) the will as technically understood. (Harris' Criminal Law, 33—38.)

*5. Define, and illustrate distinctly by example, the several offences of incitement to commit a crime, conspiracy to commit a crime, and attempt to commit a crime.*

*A. puts his hand into B.'s pocket, intending to steal whatever he finds there. The pocket is empty. Has A. been guilty of a criminal offence?*

(1.) Incitement to commit a crime. This constitutes a criminal offence where it is committed by one who, being absent at the time when the felony is committed, yet procures, counsels, commands, or abets another to commit a felony, either by direct command or counsel or by expressing assent or approbation of the felonious design of another. It is not necessary that there should be any direct communication between the accused and the principal, as if A. requests B. to procure the services of C., in order to murder D. If C. murders D., accordingly A. will be liable as an accessory

before the fact. Such an accessory is responsible for all probable consequences, as if A. counsels B. to mischievously give C. a dose of medicine merely to make him sick and C. dies in consequence, A. is guilty as an accessory before the fact to the manslaughter. (*Reg. v. Gaylor*, 7 Cox, 253.)

(2.) Conspiracy to commit a crime. This constitutes a criminal offence where it amounts to a combination of two or more persons to do an unlawful act, whether that act be the final object of the combination or only a means to the final end, and whether that act be a crime or an act hurtful to the public, a class of persons or an individual. The gist of the offence is the *combination*. Instances are conspiracies to injure a man in his trade; to raise the price of the public funds by false rumours; falsely to charge another with a crime, whether from malicious and vindictive motives or to extort money from him or her. But it is said that not every combination to effect a tort is criminal; that wherever a combination to commit a civil injury has been held criminal, the injury has been held malicious (using the term in the *non-technical* sense); for example, a combination to pull down a fence would not be criminal if the only object of the act were to try a question as to the right of way. (*Reg. v. Turner*, 13 East, 228.)

(3.) An attempt to commit a crime. This must amount to more than a mere intention to commit a crime to be itself a crime. An attempt may be said to be the doing of any of the acts which must be done in succession before the desired object can be accomplished; or rather, with the limitation that the attempt must be an act directly approximating to the commission of the offence. Thus, the procuring a die for coining was held an act in furtherance of the criminal purpose sufficiently proximate to the offence. (*Reg. v. Roberts*, 25 L. J. M. C. 17.) But not so the buying a box of matches for setting a stack of corn on fire. (*Reg. v. Taylor*, 1 F. & F. 511.) And the act must have been such that if no interruption had taken place the principal offence would have been successfully committed; so that in the above case, A. cannot be convicted of an attempt to steal. (*Reg. v. Collins*, 33 L. J. M. C. 177; 1 L. & C. 471; Harris's Criminal Law, 34, 35, 123—126, 16—7.)

#### 6. *What breaches of contract are punishable as criminal offences?*

*State the conditions necessary for supporting a prosecution in each case.*

The following are so punishable :—

(1.) Breach of contract of service by a person employed by the municipal authorities, public companies, contractors, or others who have undertaken to supply gas or water, either alone or with others.

The conditions necessary to support such a prosecution, however, are :—

(a.) That the contract was broken by the defendant wilfully and maliciously ; and,

(b.) That the defendant knew or had reasonable cause to believe at the time that the probable consequences would be to deprive the inhabitants wholly, or to a great extent, of gas or water. (The Conspiracy and Protection of Property Act, 1875, *i.e.*, 38 & 39 Vict. c. 86, s. 4.)

(2.) Breach of any contract of service by any person, if the following conditions necessary to support a prosecution are fulfilled, *viz.* :—

(a.) That the contract was broken by the defendant wilfully and maliciously.

(b.) That at the time the defendant knew or had reason to believe that the probable consequences would be (a) to endanger human life, or (b) to cause serious bodily injury, or (c) to expose valuable property to destruction or serious injury.

The above offences are punishable on summary conviction or indictment by imprisonment not exceeding three months or a penalty not exceeding £20. They are both subject to two peculiarities: (a) the parties and their husbands or wives are competent witnesses, and (b) the defendant can elect to be tried by indictment or summarily. (38 & 39 Vict. c. 86; Harris's *Crim. Law*, 121.)

*7. State the essential conditions necessary to bring an act within the offence of larceny at common law ; and point out the extent to which, and the reason why, larceny, as a common law offence, has been extended by statute in respect of the subject of the crime. A. lends B. a horse, and B. rides away with it. Has B. committed a larceny ? Give reasons.*



To constitute a larceny at common law the chattel feloniously taken must have been the property absolute or special of its alleged owner, and must have been in the possession, actual or constructive, of him in whom the property is laid. (See *Reed's case*, Dears. 168, 257.) Again, at common law, there would not be a "taking" sufficient to constitute larceny where the property alleged to have been stolen came into the hands of the prisoner *rightfully* in the first instance and without an *animus furandi*, although it were afterwards wrongfully appropriated by him. Accordingly, in the above case, B. has not committed larceny at common law if he received the horse *bond fide*. If, however, B. received the horse *animo furandi*, whatever A.'s intentions were to *bond fide* lend the horse to B., B. then has been guilty of larceny.

Further, in order to constitute larceny at common law the "taking" must have been *animo furandi* and with intent to deprive the owner wholly of his property in the thing taken.

Another ingredient is the carrying away or asportation of the chattel; for to constitute this offence there must not only be a *taking* but a *carrying* away.

Lastly, it may be well to add that if a man, by means of an innocent agent, does an act which amounts in law to this crime, the employer and not the innocent agent is the person accountable for that act. (*Reg. v. Banks*, Russ. & Ry. 441; *Reg. v. Pear*, 1 Leach, C. C. 212.)

As regards the subject-matter:—(1.) Our common law holds exempt from being the subject of larceny whatever is attached to or savours of the realty, as the chattels real, or a box of title deeds or charters concerning land. Nor can larceny be committed at common law of standing corn or of fruit from a growing tree.

(2.) Nor can larceny at common law be committed of a chose in action, as a bond, bill of exchange, &c. This last statement does not, however, extend to "documents of title importing property in possession of the party." (*Reg. v. Morrison*, Bell C. C. 158, 165—167, and the cases there cited.)

(3.) A corpse is not the subject of property. And of animals *feræ naturæ unreclaimed* and unconfined, nay, even of some domesticated animals, *e.g.*, dogs, which are in their nature unfit for human food, larceny cannot, unless by virtue of some provision of the statute law, be committed. These are now provided for by statute. (Broom's Common Law, 928—941; 924—927.)

8. *How far is compulsion or necessity an excuse for criminal misconduct? A man is convicted of stealing jewellery, some of which his wife was found wearing after the theft, and she is tried for receiving stolen goods knowing them to have been stolen. How should the jury be directed?*

As to the former part of the question, see answer to Question 2.

The jury should be directed:—

That if they come to the conclusion upon the evidence they have heard in court that the husband was absent when the wife received the stolen goods, and that she received and kept them well knowing them to have been stolen, then, whether they were received with or without the husband's order, they are to bring in a verdict of guilty against her.

That if they came to the conclusion, upon the same evidence, that the husband was present when she received them, and that she took the principal part in receiving them without any inducement or persuasion being held out to her for so doing, so as to be a voluntary act on her part, and that she received and kept them well knowing them to have been stolen goods, they are to bring in a verdict of guilty.

That if they cannot come to either of the above conclusions, but they say that she acted as a tool in the matter, or for the purpose of shielding her husband, or not knowing that the goods were stolen, or to any other conclusion, they are to bring in a verdict of not guilty against the wife. (*Reg. v. Morris*, R. & R. 270; *Reg. v. Torpey*, 12 Cox, 45; Harris's Criminal Law, 29—30.)

9. *A. leaves her husband and goes to cohabit with B., to whom she gives money which she had taken from her husband's drawer. Can B. be convicted of larceny or of receiving stolen moneys?*

Not in the absence of evidence of the taking of the goods by anyone other than the wife, as a wife cannot be convicted of stealing her husband's goods alone (at least, could not prior to the Married Women's Property Act, 1882), notwithstanding her adultery. B. cannot be convicted of receiving from her goods taken by her alone and without his participation. (*Reg. v. Kenny* (C. C. R.), 46 L. J. M. C. 156; L. R. 2 Q. B. D. 307.) *Quære* as to the effect of sects. 12 and 16 of the above-mentioned Act upon a case of this kind.

10. *Define forgery, and state how far an intent to defraud will be presumed.*

*A. is absolutely entitled to certain property, the bare legal estate of which is in B., and signs the latter's name to a conveyance to himself of such legal estate, and takes the deeds to C. to obtain a loan on mortgage. C. declines to make the advance, and returns the deeds to A., who makes no further use of the conveyance. Is he guilty of forgery?*

Forgery may be described in general terms as the false making (or alteration) of an instrument (or part thereof) which purports on the face of it to be good and valid for the purposes for which it was created, with a design to defraud.

It is not necessary to prove an intent to defraud any particular person, it will suffice to prove generally an intent to defraud. So it need not appear that the prisoner had any intention ultimately to defraud the person whose signature he had forged, he having defrauded the person to whom he uttered the instrument. But it is not necessary that any person should be actually defrauded or that any person should be in a situation to be defrauded by the act. (*Reg. v. Trenfield*, 1 F. & F. 43; *Reg. v. Nash*, 21 L. J. M. C. 147.) It follows, therefore, that A. in the above case is guilty of forgery. (See Harris's Criminal Law, 249, 255, 256.)

11. *It is established by authority that in all forgeries the instrument supposed to be forged must be a false instrument in itself. Would this principle have any application, and if so, upon what ground, to a case in which a cheque given by A. in payment of a debt due to B. is drawn by A. under a false name in the presence of B. and handed to him as A.'s own cheque drawn in his own name?*

The authority referred to is *Dennis's case* (1 L. C. C. 59), where the above resolution was agreed to by the judges.

B. cannot successfully prosecute A. for forgery in the above case.

The facts are the same as in the case of *Reg. v. Martin* (49 L. J. M. C. 11; L. R. 5 Q. B. D. 34), where no motive could be shown for the prisoner in that case not signing the cheque in his own name.

In that case the prisoner, in payment for a pony and cart purchased by him from the prosecutor, drew a cheque, in the presence of the prosecutor, upon a bank in which he, the prisoner, had no account, in the name of William Martin, his real name being Robert Martin, and gave it to the prosecutor as his, the prisoner's, own cheque drawn in his own name. The prosecutor received it in the belief that it was drawn in the prisoner's own name:—

Held, that as the prisoner gave the cheque entirely as his own, his subscribing it by a fictitious name did not make it a forgery, the credit having been wholly given to himself, without any regard to the name, or any relation to a third person.

12. *A deed duly made and executed and in all respects genuine, is fraudulently ante-dated. The date is a material part of the deed. Does the ante-dating of the instrument constitute any, and if so, what criminal offence? State the principle of law which governs your answer to the question.*

It is a forgery, which is punishable by penal servitude for life or not less than five years, or imprisonment for a period not exceeding two years. It comes within the definition of forgery, *i.e.*, "The false making (or alteration) of an instrument (or part thereof) which purports on the face of it to be good and valid for the purposes for which it was created, with a design to defraud" (2 East, P. C. 991; 4 BL 247). See also on the point *Reg. v. Ritson*, L. R. 1 C. C. R. 200; 39 L. J. M. C. 10. See Harris's Criminal Law, 249.)

13. *What are the successive steps of proof necessary to obtain a conviction for perjury?*

(1.) Perjury being one of the offences included under the Vexatious Indictments Act, no bill of indictment can be presented to or found by the grand jury unless one of the preliminary steps indicated in the Act has been taken. The most usual mode is to get the defendant committed for trial by a stipendiary magistrate or two justices of the peace.

(2.) The oath must have been taken in a judicial proceeding within the authority of the tribunal, &c., administering it, or

under the express provision of an Act of Parliament not in a judicial proceeding, but in both cases before a judge or magistrate or some officer having authority to administer it.

(3.) It will next be necessary to prove:—

(a.) That the defendant did not believe the matter deposed to and complained of to be true, and that he deposed to it intentionally and wilfully and with some degree of deliberation on his part; if it was done through mere inadvertence or mistake the charge cannot be supported.

(b.) The matter deposed to must be material to the issue.

Two witnesses will be required to contradict what the defendant has sworn, or at any rate one must so contradict, and other evidence must materially corroborate that contradiction. This rule, however, does not apply when the perjury consists in the defendant's having contradicted what he swore on a former occasion; in this case the testimony of a single witness in support of the defendant's own original statement will suffice.

Perjury is usually defined as the crime committed by one who, when a lawful oath is administered to him in some proceeding in a court of justice of competent jurisdiction, swears wilfully, absolutely and falsely in a matter material to the issue or point in question.

Perjury is a misdemeanour. The punishment is penal servitude from five to seven years, or fine or imprisonment not exceeding seven years. (Harris's Criminal Law, 78—83.)

14. Define "libel" and "publication," and state what legal proceedings can be taken against the author. Does the truth of the matters charged in the libel in all cases constitute a good defence? Can the complainant pursue more proceedings than one, and can he in the course of criminal proceedings accept an apology and abandon them?

A libel is a malicious defamation made public either by printing, writing, signs, pictures, or the like, tending either to blacken the memory of one who is dead, or the reputation of one who is alive, by exposing him (or his memory) to public hatred, contempt, or ridicule. (1 Hawk. c. 73; 1 Russ. 321; Harris's Criminal Law, 105.)

The making known the libel to any person other than the object of such libel is a publication in its legal sense. (Per Campbell, C.J., 9 Cl. & F. 321; Underhill on Torts, 85.)

To those who are aggrieved by a libel two courses are open, either to prosecute the offender criminally by indictment or information, or to seek redress by a civil action. This is the general rule; but there are cases where the injured party has a remedy by action, though the wrongdoer is not criminally punishable. The principle is, that whenever an action will lie for a libel without showing special damage (in other words, where the particular injury to the individual is not the prominent feature, but the incitement to a breach of the peace is), an indictment will also lie. While, on the one hand, there are cases (the gist of which is the loss to the person libelled and not the public offence) which are the subject of civil but not of criminal proceedings; on the other hand, sometimes a person is criminally, though not civilly, liable for what he has written. This is frequently the case when the matter of the libel is true. It is a clearly established rule, that in a civil action the truth of the matter is a good defence; whereas in a criminal proceeding it does not amount to a defence unless it be proved that it was for the public benefit that the matter should be published. The gist of the crime is the provocation to a breach of the peace by exciting feelings of revenge, &c. And the libel is not divested of this characteristic on account of its being founded on truth. However, even in criminal proceedings, the truth may be inquired into, and the Court in pronouncing sentence may consider whether the guilt of the defendant is aggravated or mitigated by the plea and evidence of the truth. (Harris's Criminal Law, 106.)

The latest statute on the law of libel is the Newspaper Libel and Registration Act, 1881 (44 & 45 Vict. c. 60), which enacts as follows:—

No criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper, for any libel published therein without the fiat of the Director of Public Prosecutions (sect. 3).

A Court of Summary Jurisdiction, upon the hearing of a charge against a proprietor, publisher, or editor, or any person responsible for the publication of a newspaper, for a libel published therein,

may receive evidence as to the publication being for the public benefit and as to the matters charged in the libel being true, and as to the report being fair and accurate and published without malice, and as to any matter which, under this or any other Act, or otherwise, might be given in evidence by way of defence by the person charged on his trial on indictment; and the Court, if of opinion, after hearing such evidence, that there is a strong or probable presumption that the jury on the trial would acquit the person charged, may dismiss the case (sect. 4).

The 5th section gives a Court of Summary Jurisdiction power to dispose summarily of libels of a trivial character and adjudge the defendant to pay a fine not exceeding £50.

The 6th section provides that offences under that Act shall be deemed offences within the Vexatious Indictments Act, (22 & 23 Vict. c. 17).

It has been decided that the prosecutor can accept a letter of apology from the defendant and thereupon abandon criminal proceedings commenced against the libeller, provided the libel is such that it is capable of either civil or criminal proceedings. (*Fisher & Co. v. Apollinaris Co.*, L. R. 10 Ch. 297; 44 L. J. Ch. 500.)

15. *What would you understand by the expression, "The Riot Act was read?" Direct your answer to the following points:—*

- (a.) *The conditions which must exist at the time ;*
- (b.) *The matter read ;*
- (c.) *The person clothed with the duty of reading it ;*
- (d.) *The legal consequences.*

A riot at common law is a tumultuous disturbance of the peace by *three* or more persons assembling together *of their own authority* with an intent mutually to assist one another against any who oppose them in the execution of some enterprise of a *private* nature, and afterwards *actually executing* the same in a violent and turbulent manner to the terror of the people, and this whether the act intended be of itself *lawful* or *unlawful*. (1 Hawk. c. 65, s. 1.)

An unlawful assembly, a rout, and a riot, at common law are  *misdemeanours* and punishable by fine or imprisonment, or both.

If, however, twelve or more persons are unlawfully assembled to the disturbance of the peace, and being required by proclamation

(i.e., by what is termed "reading the Riot Act") by a justice of the peace, sheriff or undersheriff, mayor, or other head officer of a town to disperse, they continue together for an hour thereafter, they are guilty of *felony*, and liable to penal servitude for life or not less than five years, or imprisonment not exceeding two years.

The matter actually read is prescribed by statute (1 Geo. I. st. 2, c. 5, s. 1), and is as follows:—

"Our Sovereign [Lady the Queen] chargeth and commandeth all persons being assembled, immediately to disperse themselves and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the Act made in the first year of King George for preventing tumults and riotous assemblies. God save the [Queen]."

It is a felony attended by the same punishment to oppose the reading of the above proclamation; and this opposition will not excuse those who know that the proclamation would have been read had it not been for this hindrance. Prosecutions under the Riot Act must be commenced within twelve months after the commission of the offence. (Harris's Criminal Law, 101, 102; 4 Stephens' Commentaries, 8th ed., 215, 216.)

16. *It is sought to convict a prisoner upon the uncorroborated evidence of an accomplice. Explain accurately the rules of evidence which would apply in such a case, and point out any doctrines with which these rules are in conflict, and the mode in which the apparent contradiction is reconciled.*

The jury may convict on such evidence, but in practice they do not do so.

Naturally, the evidence of an accomplice is viewed with suspicion, inasmuch as, on the one hand, the accomplice may hope to gain favour and leniency by assisting the prosecution; on the other hand, he will often be anxious to shield his companions. In practice, though not in strict law, it is deemed essential that the evidence of the accomplice should be corroborated in some material part by other evidence, so that the jury may be led to presume that he has spoken the truth generally. This confirmatory evidence must be unimpeachable; so that the evidence of another accomplice or his wife will not suffice. And



the confirmatory evidence should not be merely to the fact of the act having been committed, but should extend to the identification of the prisoner with the party concerned. (Harris's Criminal Law, 395.)

We are at a loss to understand the meaning of the latter part of the question. There are no such doctrines, that we are aware of, as are suggested.

17. *On what principles, and under what conditions, are dying declarations admissible in evidence? At the trial of A. for the murder of B., a dying declaration by C. that he, C., was the guilty party is offered in evidence. Is it admissible?*

The principle upon which such declarations are admissible in evidence is that the extreme position of the person giving the evidence is equivalent to evidence on oath.

The declarations are only admitted as evidence (1) when the person making the declaration was, at the time he or she made it, under the sensible conviction of impending death, and (2) when the death of the deceased is the subject of the charge (that is, in cases of murder and manslaughter), and (3) only if the declaration refers to the injury which is the cause of death. (Harris's Criminal Law, 413; Taylor on Evidence, 7th ed., 605, 606.) The declaration in the case quoted above is accordingly not admissible.

18. *Enumerate the different pleas admissible by way of defence in criminal cases; and explain and illustrate by example the meaning of each.*

The following are the names of the pleas in the order in which they should be pleaded:—

1. Plea to the jurisdiction, as when an indictment is taken before a Court which has no cognizance of the offence the defendant may plead to the jurisdiction without answering at all to the crime alleged. This want of jurisdiction may arise from the fact that the offence was not committed within the district of the jurisdiction—for example, if a person be indicted in Kent for stabbing a person in Sussex; or because the tribunal in question has not cognizance of that class of crimes—for example, if a person be indicted at the sessions for murder. The same relief can be obtained in other ways besides pleading this plea, as by demurrer, or by moving in

arrest of judgment, or under the general issue, or by removing the indictment into the Queen's Bench Division, and there quashing it.

2. All matters of excuse and justification may be given in evidence under the general issue; therefore it is hardly ever necessary to resort to a special plea in bar, except in the following cases:—

(a.) *Autrefois acquit*. This applies where the defendant has before been tried for the same offence, and the indictment therein was such as he could have been lawfully convicted on it, for it is against the policy of the English law that a man should be put in peril more than once for the same offence. And therefore if he is indicted a second time he may plead *autrefois acquit*, and thus bar the indictment. An acquittal for murder may be pleaded in bar of an indictment for manslaughter, but an acquittal for larceny is no bar to an indictment for false pretences.

(b.) *Autrefois convict*. This applies where the defendant has been before convicted of the same offence as he is charged with by the present indictment. It is allowed, of course, to prevent a man from being twice tried for the same offence.

(c.) Pardon. This of course means that the defendant has been pardoned by the Crown for the same offence as he is now charged with. It differs from the last two in that it can not only be pleaded like them in bar to the indictment, but also after verdict in arrest of judgment; or after judgment in bar of execution. It must be pleaded without delay, or the not doing so may amount to a waiver.

3. The general issue, which is pleaded by the defendant answering at the bar *viva voce* "not guilty." The consequence is that he is tried by a jury. (Harris's Crim. Law, 360, 365.)

19. *What limitation, having reference to the grounds of application, has been imposed by statute upon the power of the Court to grant a writ of certiorari removing an indictment into the Queen's Bench Division, or into the Central Criminal Court?*

In order to prevent the vexatious removal of indictments into the Queen's Bench Division, 16 & 17 Vict. c. 30, s. 4, was passed. It enacts that no indictment shall be removed into the (now) High Court of Justice, Queen's Bench Division, or into the Central

Criminal Court, either at the instance of the prosecutor or defendant, (1) unless it be an indictment against a body corporate not authorised to appear by attorney in the Court in which the indictment is preferred ; or (2) unless it be at the instance of the Attorney-General acting on behalf of the Crown ; or (3) unless it has been made clear by the party applying for the writ to the Court from which the writ is to issue (*i.e.*, the Queen's Bench), either (*a*) that a fair and impartial trial cannot be had in the Court below ; or (*b*) that some question of law of more than usual difficulty and importance is likely to arise upon the trial ; or (*c*) that a view of the premises in respect whereof any indictment is preferred ; or (*d*) a special jury may be required for the satisfactory trial of the same.

And the same statute, still further to prevent the vexatious removal of indictments into the (now) High Court of Justice, Queen's Bench Division, enacts that no *certiorari* is to issue to remove an indictment unless recognisances be given for the payment of costs in case of failure by the party applying for the removal. (Harris's Criminal Law, 287.)

20. *State shortly the chief new provisions introduced by the Summary Jurisdiction Act, 1879.*

The above Act (42 & 43 Vict. c. 49) came into operation on the 1st January, 1880.

Its chief new provisions are :—

(1.) Where a Court of Summary Jurisdiction has by any past or future Act authority to impose summarily a fine or imprisonment, that Court may in the case of a fine imposed in respect of a first offence reduce the amount prescribed by the Act authorising it ; and that Court may in the case of imprisonment impose the same without hard labour, and reduce the period prescribed in the Act authorising it.

And where an offender was before required, in the case of imprisonment or fine, to enter into a recognisance and to find sureties for keeping the peace and observe some other condition, or to do any of such things, the Court may dispense with any such requirement or any part thereof.

And where the Court has power under any other Act, whether past or future, to impose imprisonment for an offence punishable on summary conviction, and has not authority to impose a fine for that

offence, that Court when adjudicating on such offence may, if it be thought that the justice of the case will be better met by a fine than by imprisonment, impose a fine not exceeding £25 and not being of such an amount as will subject the offender, if he does not pay the fine, to any greater term of imprisonment than that to which he is liable under the Act authorising the imprisonment.

The above provisions are all subject to the other provisions of the Summary Jurisdiction Act to the contrary.

(2.) The maximum period of imprisonment fixed under any past or future Act, in respect of the non-payment of any sum of money adjudged to be paid by a conviction, or in respect of the default of a sufficient distress to satisfy any such sum, is settled by the following scale:—

When the amount ascertained by the conviction	The said period shall not exceed
Does not exceed 10s. . . . .	7 days.
Exceeds 10s., but does not exceed £1 . . . . .	14 days.
Exceeds £1, but does not exceed £5 . . . . .	1 month.
Exceeds £5, but does not exceed £20 . . . . .	2 months.
Exceeds £20 . . . . .	3 months.

And the Court is not to order hard labour in addition unless expressly authorised.

(3.) Where a Court of Summary Jurisdiction has power to order a civil debt to be paid upon a complaint, it is to be recovered in the manner pointed out in this Act, and not otherwise; and the payment in any such case of any costs when ordered is to be enforced as a civil debt, and not otherwise.

(4.) Power is given to a Court of Summary Jurisdiction, if the Court adjudge any sum to be paid, to—

1. Allow time for payment thereof.
2. Direct payment by instalments.
3. Direct the person liable to pay such sum to give security.

(5.) Where the fine in a given case does not exceed 5s., the Court is not to order the defendant to pay the informant his costs in addition, in the absence of special circumstances, but the Court is to order the Court fees paid by the informant to be returned to him or

her, and may order the defendant's fine to be paid to the informant towards his costs.

(6.) Where a recognisance is conditioned for the appearance of a person before a Court of Summary Jurisdiction or for the performance of some other matter or thing into or before a Court of Summary Jurisdiction, or in a proceeding in such Court, power is given to such Court to declare it forfeited, and enforce the sum due thereunder like a fine; but at any time before the sale of goods under a warrant of distress for the said sum the Court may cancel or mitigate the forfeiture upon the offending person's application, and upon his giving security for the due performance of the recognisance in the future, and arranging the costs incurred by the forfeiture, and such other conditions as the Court thinks just to impose on him. And this Act contains other provisions as to enforcing recognisances, and as to sums paid thereunder.

(7.) Where a child (*i.e.*, a person under twelve) is charged before a Court of Summary Jurisdiction with any indictable offence other than homicide, the Court, if it be thought expedient so to do, and if the parent or guardian of the child so charged, when informed by the Court of his right to have the child tried by a jury, does not object to the child being dealt with summarily, may deal summarily with the offence and inflict the same description of punishment as might have been inflicted had the case been tried on indictment.

But—

(a.) Instead of penal servitude, imprisonment shall be ordered; and

(b.) No imprisonment is to exceed one month; and

(c.) No fine is to exceed 40*s.*; and

(d.) If the child is a male, six strokes of the birch-rod may be ordered in addition to, or in substitution for, any other punishment.

This Act, however, neither prejudices the power of a Court of Summary Jurisdiction to send a child to a reformatory or industrial school, nor renders punishable a child under seven who has not sufficient capacity to commit a crime.

(8.) Where a young person (*i.e.*, one above twelve and under sixteen) is charged before a Court of Summary Jurisdiction with—

(a.) Simple larceny; or

(b.) Offences punishable as simple larceny under any Act; or

(c.) Larceny or stealing from the person; or with

- (d.) Larceny as a clerk or servant ; or with
- (e.) Embezzlement by a clerk or servant ; or with
- (f.) Receiving stolen goods, within either sect. 91 or sect. 95 of the Larceny Act, 1861 (24 & 25 Vict. c. 96) ; or
- (g.) Aiding, abetting, counselling, or procuring the commission of simple larceny, or of an offence declared by any Act for the time being in force to be punishable as simple larceny, or of larceny or stealing from the person, or of larceny as a clerk or servant ; or of an

(h.) Attempt to commit simple larceny, or an offence declared by any Act to be punishable as simple larceny from or steal from the person, or to commit larceny as a clerk or servant ;  
 the Court, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case, and if the young person charged with the offence, when informed by the Court of his right to be tried by a jury, consents to be dealt with summarily, has a discretion to deal summarily with the offence, and a discretion to adjudge such person, if found guilty of the offence, either to pay a fine not exceeding £10, or to be imprisoned with or without hard labour for any term not exceeding three months ; and if the young person is a male and under fourteen, the Court, in its discretion, may either in addition to or in substitution for any other punishment, adjudge such person to be privately whipped with not more than twelve strokes of a birch-rod.

This Act is, however, without prejudice to the right of such a Court to send such young person to a reformatory or industrial school.

(9.) Where an adult (*i.e.*, a person above sixteen) is charged before a Court of Summary Jurisdiction with—

- (a.) Simple larceny, and the property stolen is not worth more than 40s. ; or with
- (b.) Offences declared by any Act to be punishable as simple larceny, and the property stolen, injured, or dealt with is not worth more than 40s. ; or with
- (c.) Larceny or stealing from the person, when the property stolen is not worth more than 40s. ; or with
- (d.) Larceny as a clerk or servant, where the value of the whole of the property alleged to have been stolen is not more than 40s. ; or with

(e.) Embezzlement by a clerk or servant, where the property embezzled is not worth more than 40s.; or with

(f.) Receiving stolen goods, within sects. 91 and 92 of the Larceny Act, 1861 (24 & 25 Vict. c. 96), where the property is not worth more than 40s.; or with

(g.) Aiding, abetting, counselling, or procuring the commission of simple larceny, or of an offence declared by any Act to be punishable as simple larceny, or of larceny, or stealing from the person, or of larceny as a clerk or servant, where the property which is the subject of the alleged offence is not worth more than 40s.; or with

(h.) An attempt to commit simple larceny, or an offence declared to be punishable as simple larceny, or to commit larceny, or steal from the person, or to commit larceny as a clerk or servant; the Court may, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case, *and if the person charged, when informed by the Court of his or her right to be tried by a jury, consents to be dealt with summarily*, deal summarily with the offence, and adjudge such person, if found guilty of the offence, to be imprisoned with or without hard labour for any term not exceeding three months, or to pay a fine not exceeding £20.

(10.) Where an adult (*i.e.*, a person above sixteen) is charged before a Court of Summary Jurisdiction with any indictable offence mentioned above in paragraph (8), and not also mentioned in paragraph (9), and the Court during the hearing becomes satisfied (a) that the evidence is sufficient to put the person charged upon his trial, and (b) that the case is one which, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case, may properly be dealt with summarily, and (c) may be adequately punished by virtue of this Act, then the Court, after taking certain prescribed precautions to acquaint the person charged with the meaning of being dealt with summarily, or in the alternative, of his right to be committed for trial at the assizes or sessions (as the case may be) may, *if the person charged says that he or she is guilty*, adjudge him to be imprisoned with or without hard labour for any term not exceeding six months.

(11.) Where, however, an adult is charged before a Court of

Summary Jurisdiction with any indictable offence mentioned above in either paragraphs (8) or (9), and it appears to the Court that the offence is one which, owing to a previous conviction on indictment of the person so charged, is punishable by law with penal servitude, the Court shall not deal with the case summarily under this Act.

(12.) A child (*i.e.*, a person under twelve), on summary conviction under any past or future Act, shall not be imprisoned for a longer period than one month nor fined more than 40s.

(13.) Except in the case of an adult pleading guilty, as stated in paragraph (10), the Court, upon hearing of a charge for an offence punishable on summary conviction under any past or future Act, may, if the Court thinks that though the charge is proved the offence was in the particular case of so trifling a nature that it is inexpedient to inflict any punishment, or any other than nominal punishment—

(a.) Dismiss the information, and if the Court thinks fit may order the person charged to pay such damages, not exceeding 40s., and such costs of the proceeding or either of them as the Court think reasonable; or

(b.) Upon convicting the person charged, may discharge him or her conditionally on his or her giving security to appear for sentence when called upon, or to be of good behaviour, and either upon or subject to the payment of damages and costs, or either of them.

(14.) Except in the case of a child whose parent or guardian is not present where a person is charged with an offence which is not an assault, and who is liable on summary conviction to imprisonment for a term exceeding three months, the person charged may claim to be tried by a jury.

(15.) A Court of Summary Jurisdiction is not to impose on any person imprisonment for assaults committed on one occasion by cumulative sentences for more than six months, unless the imprisonment is imposed for a default in finding sureties.

(16.) Except where imprisonment is adjudged for failure to comply with an order for the payment of money, for the finding of sureties, for the entering into any recognisance, or for the giving of any security, this Act gives a person adjudged on summary conviction to be imprisoned without the option of a fine, either as a punishment for an offence for failing to do or abstain from doing any act or thing required to be done or left undone, power to appeal



to a Court of General or Quarter Sessions against the conviction or order, unless he has pleaded guilty.

(17.) This Act provides that, except as to adjournments, cases shall be dealt with summarily only in an open Court in a Petty Sessional Court or an occasional court-house, which it defines, and limits the punishment to be ordered in an occasional court-house.

(18.) This Act gives the Court special powers of issuing warrants of commitment and warrants of distress.

(19.) This Act also contains special supplementary provisions as to—

- (a.) Remands and adjournments ;
- (b.) Sureties to keep the peace ;
- (c.) As to procedure when indictable offences are dealt with summarily ;

(d.) Costs of prosecution ; and

(e.) Making new rules.

(20.) The remainder of this Act relates to amendment of procedure, and particularly with reference to—

- (a.) Procedure on appeal to General or Quarter Sessions ;
- (b.) Appeals to General or Quarter Sessions under prior Acts ;
- (c.) Appeals by special case ;
- (d.) Summary orders ;
- (e.) Recovery of civil debts in a Court of Summary Jurisdiction ;
- (f.) Summons to witness out of the jurisdiction ;
- (g.) Bail of persons arrested without a warrant, except for serious offences ;

(h.) Proof of service of process, and of handwriting of a justice ;

(i.) Recognisances may be taken out of Court ;

(j.) Execution of distress warrants ;

(k.) Return of property to the prisoner ;

(l.) Local jurisdiction of such Courts of Summary Jurisdiction. (See the Act fully set out in Haynes's Student's Statutes, 2nd ed., 436—464.)

The above Act has been slightly amended and extended by 44 & 45 Vict. c. 24.

21. *What modes of appeal from Courts of Summary Jurisdiction are dealt with by "The Summary Jurisdiction Act, 1879" (42 & 43 Vict. c. 49), and what are, shortly, the conditions prescribed as to each of them by the Act ?*

Two modes are provided, by sect. 19 (to Quarter Sessions), and by sect. 33 (to the High Court of Justice) respectively.

Sect. 19 provides as follows :—

Where, in pursuance of any Act, whether past or future, any person is adjudged by a conviction or order of a Court of Summary Jurisdiction to be imprisoned without the option of a fine, either as a punishment for an offence, or, save as hereinafter mentioned, for failing to do or to abstain from doing any act or thing required to be done or left undone, and such person is not otherwise authorised to appeal to a Court of General or Quarter Sessions, and did not plead guilty, or admit the truth of the information or complaint, he may, notwithstanding anything in the said Act, appeal to a Court of General or Quarter Sessions against such conviction or order.

Provided that this section shall not apply where the imprisonment is adjudged for failure to comply with an order for the payment of money, for the finding of sureties, for the entering into any recognisance, or for the giving of any security.

The conditions of appeal to General or Quarter Sessions are prescribed by sect. 31, which is as follows :—

Where any person is authorised by this Act or by any future Act to appeal from the conviction or order of a Court of Summary Jurisdiction to a Court of General or Quarter Sessions, he may appeal to such Court, subject to the conditions and regulations following :—

(1.) The appeal shall be made to the prescribed Court of General or Quarter Sessions; or, if no Court is prescribed, to the next practicable Court of General or Quarter Sessions having jurisdiction in the county, borough, or place for which the said Court of Summary Jurisdiction acted, and holden not less than *fifteen* days after the day on which the decision was given upon which the conviction or order was founded; and

(2.) The appellant shall, within the prescribed time, or if no time is prescribed, within *seven* days after the day on which the said decision of the Court was given, give notice of appeal by serving on the other party, and on the clerks of the said Court of Summary Jurisdiction, notice in writing of his intention to appeal, and of the general grounds of such appeal; and

(3.) The appellant shall, within the prescribed time, or if no time is prescribed, within *three* days after the day on which he gave notice of appeal, enter into a recognisance before a Court of Summary Jurisdiction, with or without a surety or sureties, as that Court may direct, conditioned to appear at the said Sessions

and to try such appeal, and to abide the judgment of the Court of appeal thereon, and to pay such costs as may be awarded by the Court of appeal; or the appellant may, if the Court of Summary Jurisdiction before whom the appellant appears to enter into a recognisance thinks it expedient, instead of entering into a recognisance, give such other security, by deposit of money with the clerks of the Court of Summary Jurisdiction, or otherwise, as that Court may deem sufficient; and

(4.) Where the appellant is in custody, the Court of Summary Jurisdiction before which the appellant appears to enter into a recognisance may, if the Court thinks fit, on the appellant entering into such recognisance, or giving such other security as aforesaid, release him from custody; and

(5.) The Court of appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the Court of Summary Jurisdiction, or remit the matter, with the opinion of the Court of appeal thereon, to a Court of Summary Jurisdiction acting for the same county, borough, or place as the Court by which the conviction or order appealed against, was made, or may make such other order in the matter as the Court of appeal may think just, and may by such order exercise any power which the Court of Summary Jurisdiction might have exercised, and such order shall have the same effect, and may be enforced in the same manner, as if it had been made by the Court of Summary Jurisdiction. The Court of appeal may also make such order as to costs to be paid by either party as the Court may think just; and

(6.) Whenever a decision is not confirmed by the Court of appeal, the clerk of the peace shall send to the clerk of the Court of Summary Jurisdiction from whose decision the appeal was made, for entry in his register, and also indorse on the conviction or order appealed against, a memorandum of the decision of the Court of appeal, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the said decision in every case where such copy or certificate would be sufficient evidence of such conviction or order; and

(7.) Every notice in writing required by this section to be given by an appellant shall be in writing, signed by him or by his agent

on his behalf, and may be transmitted as a registered letter by the post in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of the post.

Section 33 provides as to the mode of appeal to the High Court of Justice as follows:—

(1.) Any person aggrieved who desires to question a conviction, order, determination, or other proceeding of a Court of Summary Jurisdiction, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to the Court to state a special case, setting forth the facts of the case, and the grounds on which the proceeding is questioned; and, if the Court decline to state the case, may apply to the High Court of Justice for an order requiring the case to be stated.

(2.) The application shall be made and the case stated within such time and in such manner as may be from time to time directed by rules under this Act, and the case shall be heard and determined in manner prescribed by Rules of Court made in pursuance of the Supreme Court of Judicature Act, 1875, and the Acts amending the same; and, subject as aforesaid, the 20 & 21 Vict. c. 43, shall, so far as it is applicable, apply to any special case stated under this section as if it were stated under that Act.

Provided that nothing in this section shall prejudice the statement of any special case under that Act. (Haynes's Student's Statutes, 2nd ed., 444, 451—453.)

---

## PROBATE.

22. *How far does the possession of delusions upon particular subjects only affect testamentary capacity?*

*A testator is of good general business habits, and continues in the management of his affairs till his death, but he is for some years under the delusion that he is a member of the Royal family. By his will he leaves his property to his wife for life, and after her death to members of the Royal family, to the exclusion of brothers and sisters. Is the will valid or invalid, either wholly or in part?*

A man may be capable of transacting business of an important kind, involving the exercise of considerable powers of intellect, and yet may be subject to delusions so as to be unfit to make a will. The now established principle of law is that if the delusions

under which the testator labours are such that they could not reasonably have been supposed to have affected the disposition made by his will, the will is valid. (Browne's Probate Practice, 20.) In the case put in the question, the delusion seems directly to have influenced the disposition; and, therefore, it appears to be deducible that the will would be invalid. (Haynes's Guide to Probate and Divorce, 2nd ed., 10.) But the will of a person subject to lunacy made in a lucid interval is good; where a testator subject to violent attacks of excitement and to delusions (though not insane) executed a will and codicil they were pronounced for as made in a lucid interval and *not* on the face of them sounding in folly. (*Borlase v. Borlase*, 4, No. of Ca. 106; Browne's Probate, 26.)

23. *The will of a testator who dies domiciled abroad is formally recognised and acted on by a Court of competent jurisdiction in the country of his domicile. How, and upon what principle, will this circumstance affect the rights of parties upon a subsequent application for probate made here in respect of property in this country?*

*Could probate be resisted here on the ground of the testator's mental incapacity?*

If any part of the property be in England, probate or administration must also be taken out here; for though the law of the domicile of a deceased person governs the succession to his personal estate, wherever situated, the estate itself must be administered in the country in which possession is taken of it under lawful authority. The duty of the English Court would in such a case be, as it were, ministerial merely, to grant ancillary probate or administration. And the practice of the Court now is to follow the grant of the Court of the testator's domicile, not merely as to the document which that Court has admitted to probate, but also as to the person to whom the grant is made. (Browne's Probate Practice, 50.)

It is now fully decided that whenever a will has been formally recognised and acted upon by a Court of competent jurisdiction in the country of the domicile of the deceased at the time of his death, and remains unquestioned in that country, the Probate Division will not allow the validity of such will to be litigated here. (Haynes's Guide to Probate and Divorce, 2nd ed., 15.)

24. *State what amount of influence is requisite to vitiate a will, and the difference in respect of the burden of proof between the rules*

*of equity in relation to gifts inter vivos, and the rules applicable to testamentary gifts.*

The influence to vitiate an act must amount to force and coercion, destroying free agency. It must not be the influence of affection and attachment; it must not be the mere desire of gratifying the wishes of another, for that would be a very strong ground in support of a testamentary act. Further, there must be proof that the act was obtained by this coercion—by importunity which could not be resisted; that it was done merely for the sake of peace; so that the motive was tantamount to force and fear. (Williams on Executors.)

In the case of gifts *inter vivos*, whenever an intimate relationship is shown to have existed between the donor and the donee, the burden lies on the party benefited of showing that the gift was obtained without undue influence; on the other hand, in the case of a testamentary paper, the burden lies on the party who opposes the admission of such testamentary paper to probate to show, by such evidence as a jury could reasonably act upon, that the execution of such testamentary paper was obtained by undue influence. (Browne's Probate Practice, 31, cited in Haynes's Guide to Probate and Divorce, 2nd ed., 9, 10.)

25. *State all the modes in which a will may be (1) revoked, (2) revived. The plaintiff in a suit propounds a will. The defendant pleads its revocation by a subsequent will, and the plaintiff replies that the testator destroyed the second will with the intention of reviving the first. Assuming these facts to be proved, what will be the result?*

(1.) A will may be revoked if executed after 1st January, 1838:—

(a.) By marriage, except a will made in exercise of a power of appointment, when the estate thereby appointed would not, in default of appointment, pass to the heir, executor, or administrator, or next of kin under the Statutes of Distributions.

(b.) By another duly executed will or codicil.

(c.) By some writing declaring an intention to revoke the same, and executed like a will.

(d.) By the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, *with the intention of revoking the same.*

(2.) A will may be revived—

(a.) By re-execution, or

(b.) By a duly executed codicil, showing an intention to revive the same. (1 Vict. c. 26; Haynes's Guide to Probate and Divorce, 2nd ed., 12, 14.)

The second will will be admitted to probate on proof of its contents by the production of the drafts, &c., because it was not destroyed *animo revocandi* absolutely, but upon a condition which is unfulfilled, as the first will can only be revived in one of the two ways indicated above. (*Powell v. Powell*, 1 L. R. Prob. 209; 35 L. J. P. & M. 100.)

The mere physical act of mutilation or destruction is equivocal; it is, when intentional, sometimes accompanied by the intention not only of destroying and annulling the mutilated document, but also of setting up some other will in its place; when, therefore, the two intentions are so linked together as to lead to the supposition that the testator would not have done the one without also doing the other, and by ignorance or accident the intention, which accompanies the intention to destroy, fails to be carried out, then the doctrine of what is called "dependant relative revocation" arises, which is founded on a desire to carry out the testator's intentions; and the Court holds that the condition or accompanying intention under which the testator destroyed the document, being unfulfilled, the act does not amount to an act of revocation. (*Browne's Probate Practice*, 96, 97.)

26. *What power has a married woman of making a will, whether generally, or with respect to separate estate, or in pursuance of a power? Is any special form of grant requisite in any of these cases?*

*A married woman makes a will with the assent of her husband, whom she survives, and which purports to dispose both of her separate estate, and by general terms of all other her property. Who will, on her death, be entitled to such separate estate and to her personal estate, consisting of property acquired after her husband's death?*

If of full age she may make a will—

(a.) Of her personal estate, with the consent of her husband.

(b.) While her husband is a convict, or *civiliter mortuus*.

- (c.) Respecting property vested in her as executrix.
- (d.) If she has obtained a protection order under the Divorce Act.
- (e.) In case of judicial separation under the same Act.
- (f.) In pursuance of a general or special power of appointment.
- (g.) Of her separate property within (1) the Married Women's Property Act, 1882; and (2) in respect of separate property acquired under some deed or will or contract, by a woman married before that Act, or already made separate property, by 33 & 34 Vict. c. 93.

Where probate of a married woman's will made by virtue of a power, or administration with such will annexed is granted, the grant must specify the power under which the will purports to have been made. Where a married woman disposes by will of Bank of England Stock under a power, it is the practice to specify the stock in the limitation of the grant of probate or letters of administration with the will annexed. In these two cases the grants are thus in a special form. (Browne's Probate Practice, 430.)

In the above case, on her death the separate property will pass under that will, unless she is restrained from anticipating it, or has disposed of such separate property, or has dealt with it before her death so as to destroy the nature of such separate property. As regards the other personal property, that will devolve upon her next of kin, unless she revives the above will by a codicil or re-execution, for a married woman cannot dispose of such personal property, except as above stated, without her husband's assent, and this assent he can withdraw at any time before probate. The death of the husband in her lifetime operates as a revocation on his part. As regards her personal estate acquired after her husband's death, that cannot pass under the above will unless it has been revived by her since her husband's death, and she died a widow. (See *Pride v. Bubb*, L. R. 7 Ch. 64; 41 L. J. Ch. 105; *Taylor v. Meads*, 4 De G. J. & S. 597; 34 L. J. Ch. 203.)

Now as to property to which 45 & 46 Vict. c. 75 applies a married woman can dispose by will of *all* her property in the same way as if she were a *feme sole* unless she is restrained from anticipating it.

27. Define the meaning of the term "*renunciation*" as applied to probate and administration. From what date does a renunciation take effect, and what will be its operation upon a will of which the testator was himself an executor?



Whenever a person is appointed an executor, and therefore can take out probate of the will, or whenever a person by his or her being the husband or wife or one of the next of kin or creditor of a deceased person, whereby he has a right under the circumstances to take out letters of administration, and no one else has taken out probate or administration, he or she has an option to do so or not, as he or she thinks proper, and this option generally continues until it is determined by acceptance or refusal. If he or she chooses to refuse the office, he or she does so in one of two ways : (a.) By executing a deed of renunciation in the prescribed form in the presence of one disinterested witness, which contains in addition to the effectual words a declaration that he or she has not intermeddled and will not intermeddle with the estate with intent to defraud creditors, and it must be filed in the registry by a solicitor, or by the person renouncing. (b.) By being cited to take out probate or administration and not appearing.

In either case the effect is that the person so renouncing voluntarily or involuntarily is in the same position as if he or she never had the right to renounce or be cited to all intents and purposes, and therefore the renunciation relates back to the date of the death. A person cannot renounce if he has intermeddled with the estate and has been appointed executor, nor after he has taken out probate with or without intermeddling. A person cannot be compelled to take out administration by intermeddling with the estate of one who has died intestate, or testate without appointing an executor. There is no such thing in our law as an administrator *de son tort* (Williams on Executors). An executor can only retract a voluntary renunciation for the purpose of taking out probate. No person is to be allowed to take out probate or administration in one character who has renounced in another character. As above explained, the renunciation affects the whole estate of the deceased, either beneficially or as trustee only for others, and consequently, in the above case, the office of executor will devolve as if he had never been appointed executor. (See Browne's Probate Practice, 136.)

28. *The following wills dispose only of real estate. Would all or any of them be admitted to probate? Explain the grounds for your answer in each case.*

(a.) *A will containing a direction (amounting to an equitable conversion) to convert the real estate into personalty, and to pay debts and certain specified legacies out of the proceeds of the sale.*

(b.) *A will containing an appointment of an executor.*

(c.) *A will containing an appointment of an executor, made by a married woman in exercise of a power.*

(a.) The circumstances here are similar to those in a case which has been before the Court. A testator by his will ordered his debts to be paid and a portion of his real estate to be sold, and out of the proceeds thereof certain legacies to be paid. All his other tenements or hereditaments whatsoever in remainder or expectancy he gave and devised unto his son and daughters, in equal proportion. No direct reference was made to personal estate. It was held that the Court has no jurisdiction to grant probate of such a will. (*In the goods of Bootle*, L. R. 3 P. & D. 177; Haynes's Student's Leading Cases, 344.) The Court will, however, grant probate of a will disposing of realty only if an executor be appointed therein, even if he should renounce. (*In the goods of Jordan*, 37 L. J. P. & M. 22.)

(b.) This will will be admitted to probate unless it is the will of a married woman. (*Brownrigg v. Pike*, 51 L. J. P. D. & A. 29.)

(c.) This will will not be admitted to probate, as the executor takes nothing in his character as personal representative, and the will is a will in form only. The Judicature Acts have not extended the jurisdiction of the Probate Court in non-contentious matters. (*In the goods of Elizabeth Tomlinson*, 51 L. J. P. D. & A. 74.) Where however 45 & 46 Vict. c. 75 applies a married woman is like a *feme sole* unless she is restrained from anticipating her property.

29. *When, and in what form, will probate be granted of a codicil, where the will cannot be found, and it is impracticable to prove its contents or substance?*

Probate will only be granted of a codicil to a will when the will cannot be found, if the Court is satisfied by the dispositions of the codicil that the testator intended that it should operate independently of the will. (*In the goods of Greig*, 35 L. J. P. & M. 113; L. R. 1 P. & M. 72.) The probate when granted will be in the ordinary form. (Haynes's Guide to Probate and Divorce, 2nd ed., 18.)

30. *A testator in his will refers to some documents in terms which indicate an intention to incorporate them in his testamentary dispositions, but which do not clearly identify the documents. How will the Court deal with this state of circumstances upon an application for probate?*

The Court will, upon the documents being satisfactorily identified by parol evidence, order them, with the will, to be engrossed together so as to constitute the probate.

The rules as to the incorporation of documents may be summed up as follows :—

(a.) The testamentary instrument must clearly describe the document proposed to be incorporated, but the document may be identified by parol.

(b.) The testamentary instrument must describe the document as *already existing*; if defective in this, the fact cannot be supplied by parol.

(c.) When duly incorporated, the document, however informal, becomes equally valid with the instrument with which it is incorporated, but it must be such a document as *actually to affect the operation of such instrument*. (Browne's Probate Practice, 104; cited in Haynes's Guide to Probate and Divorce, 2nd ed., 17, 18.)

31. *What power was conferred on the Court by the Court of Probate Act, 1857, in derogation of the rights of persons entitled by law to grants of administration of personal estate?*

*Illustrate your answer by reference to a class of cases in which the power is usually exercised.*

The power referred to was conferred by sect. 73 of the Court of Probate Act, 1857, and enables that Court to grant administration to such person as the Court shall think fit to be such administrator, although he may not be the person by law entitled. That enactment applies to cases where it appears to the Court to be necessary or convenient, "by reason of the insolvency of the estate of the deceased, or other special circumstances," to appoint such person, and it applies to cases where the deceased died wholly intestate as to personalty, or leaving a will of personalty, but there is no executor

appointed or no executor willing or competent to act, or where the executor is not resident in Great Britain or Ireland. The grant if made thereunder must, however, be given to a person "other than the person who, if that Act had not been passed, would by law have been entitled to the grant." The terms of the section are perfectly general, and they give a most extensive power to the Court to make, under any special circumstances, the grant which in the particular case it may think fit. Before applying under this section for a grant, parties, though having a mere legal interest, should be cited, or they should renounce, and all deeds on which the application may be founded should be brought into the registry. (Browne's Probate Practice, 186—188.)

The two following recent cases will illustrate the section more clearly.

A. died intestate. His estate was insolvent, the only asset of any value being an interest in a mortgage of property in Ceylon, which he had conveyed to the trustees of his marriage settlement, one of whom was B., his brother-in-law. A. was a widower, and left five children, two of whom were of full age. The two adult children had renounced administration. The Court, on a renunciation by the eldest son on behalf of the minor children, who had appointed him as their guardian for the purpose of the application, made a grant of administration to B., under 20 & 21 Vict. c. 77, sect. 73. (*In the goods of Tyndall*, 51 L. J. P. D. & A. 12.)

A., the wife of B., was entitled at the time of her death to a share in the residuary estate of P., subject to certain life interests. There had been no settlement upon the marriage, and A. left no will. B. died, without taking out letters of administration to A., and having made a will, which was proved by his daughter C., as sole executrix, he was at the time of his death indebted to the estate of P. A.'s share in the residuary estate of P. having been paid into the Chancery Division, D., who was also entitled to a share in the residuary estate, was desirous of taking proceedings to render A.'s share liable for B.'s debt to the estate. C. was cited to take out administration to the estate of A., but refused to do so. The Court made a grant to D., under 20 & 21 Vict. c. 77, sect. 73, of letters of administration of the personal estate of A. (*In the goods of Wensley*, 51 L. J. P. D. & A. 21.)

32. *In what circumstances and by what mode does the Court allow a will to be proved by persons other than the executors, and to what rule, not applicable to ordinary executors, are such persons subjected?*

As to the former part of the question, see the preceding answer.

Such persons must, like all other administrators, give a bond for the due performance of their duties as such administrator (20 & 21 Vict. c. 77, sect. 81). The Court has no power to dispense with the bond under any circumstances.

Section 73 is as follows :—

Where a person has died or shall die wholly intestate as to his personal estate, or leaving a will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or where the executor shall at the time of the death of such person be resident out of the United Kingdom of Great Britain and Ireland, and it shall appear to the Court to be necessary or convenient in any such case, by reason of the insolvency of the estate of the deceased, or other special circumstances, to appoint some person to be the administrator of the personal estate of the deceased, or of any part of such personal estate, other than the person who, if this Act had not been passed, would by law have been entitled to a grant of administration of such personal estate, it shall not be obligatory upon the Court to grant administration of the personal estate of such deceased person to the person who, if this Act had not been passed, would by law have been entitled to a grant thereof, but it shall be lawful for the Court, in its discretion, to appoint such person as the Court shall think fit to be such administrator upon his giving such security (if any) as the Court shall direct, and every such administration may be limited as the Court shall think fit. (Browne's Probate Practice, 390, 391; Haynes's Guide to Probate and Divorce, 2nd ed., 30.)

33. *When is a creditor entitled to take out administration? What proof of debt is required from him generally, and what proof where two or more creditors are contending for the grant? If the estate is insolvent, may the Court require a creditor to enter into any special engagement, and, if so, in what shape, and why?*

Only when neither the husband or widow of the deceased, as the case may be, nor any of the next of kin of the deceased, refuse to appear on being cited by the creditor, or renounce voluntarily. Even then he cannot obtain administration as of course, but must move the Court for a special order for leave to do so. Whether the estate is solvent or insolvent, the Court prefers the widow or one of the next of kin to a stranger.

The Court will not grant administration to a creditor without an affidavit to the effect that (1) he is a creditor; and (2) when his debt became due; and (3) that all persons entitled in distribution of the effects of the deceased have been cited or renounced voluntarily; and (4) the amount of the personal estate of the deceased.

When two or more are contending for the grant, the Court will require more particular evidence as to the amount of the creditors respective claims, their nature, amount, and consideration, so as to ascertain which is the more valuable, for the Court always endeavours to grant administration to the person having the largest interest in cases of conflict, and where the rights are equal in all respects the Court grants the letters of administration to the party first seeking them. (Browne's Probate, 178.)

The administrator's bond in such a case is not drawn by the solicitor to the creditor, but is now drawn in the registry, and an extra fee paid. The bond is printed and in the usual form, except that it contains a clause binding the administrator to distribute the assets amongst all the creditors, including himself, *pro rata*. (See *In the goods of L. J. Brackenbury*, 46 L. J. P. D. & A. 42.)

---

## DIVORCE.

34. *A marriage is contracted in this country between a foreigner domiciled in his own country and an Englishwoman. The husband and wife go to reside in the country of the husband's domicile, and the marriage is dissolved by a decree made there, upon grounds which would not support a decree according to English law. What, if any, effect will be given in this country to the decree so made? Explain the governing principle of your answer.*

Full effect will be given to the decree so made by the Courts in this country.

"If a domiciled foreigner comes into this country for the purpose of taking a wife from this country, the moment the marriage is contracted, the moment the *vinculum* exists, then the lady becomes to all intents and purposes of the same domicile as the husband, and all the rights and consequences arising from the marriage are to be determined by the law of that which, by the actual contract of marriage, becomes the domicile of both parties, exactly to the same extent as if they had both been originally of a foreign country. It seems to me that there is no qualification of that rule. A wife's home is her husband's home; a wife's country is her husband's country; a wife's domicile is her husband's domicile; and any question arising with reference to the status of those persons is, according to my view, to be determined according to the law of the domicile of the persons, assuming always that the domicile is a *bond fide* one, and not a domicile either fictitious or resorted to for the sole purpose of altering the status." (Extracted from the judgment of James, L.J., on appeal, in *Harvey v. Farnie*, 50 L. J. P. D. & A. 17; L. R. 6 P. D. 35.)

35. *A. and B. are first cousins, and are domiciled in a country where their marriage is illegal. They marry in England according to English law, and subsequently return to the country of their domicile. Is the marriage valid in England, and has the English Court jurisdiction to entertain a petition for nullity?*

Assuming the facts to be as above, and that both the husband and wife before marriage were domiciled abroad, where the law is as above stated, the domicile will prevail, and the marriage can and will be declared void here.

The above question is founded on the case of *Sottomayor v. De Barros*. That case was decided originally by Sir R. J. Phillimore, when he held the marriage to be valid here, and pointed out that with few exceptions the Court of the *lex loci contractus* is not bound to recognise incapacity attaching to the parties by the law of their domicile. (See 46 L. J. P. D. & A. 43.)

Then there was an appeal, and the parties arranged to raise the point of law only, and obtain the decision of the Court of Appeal on certain facts which were assumed to be correct, and left the real facts to be ascertained by Sir James Hannen. The Court of

Appeal assumed that A. and B. were *both* domiciled in Portugal at the time of their marriage, and upon that assumption decided that the law of the place of domicile of both parties governed, and consequently the marriage was invalid, and must be so declared here. (See 47 L. J. P. D. & A. 23.) Then that case came on before Sir James Hannen, and he found out that the above assumption was not in accordance with the facts, and that the facts were that the husband was a domiciled Englishman and the wife was a domiciled Portuguese, and decided that upon those facts the law was that the *lex loci contractus* should prevail in the matter, and that as the marriage was valid according to the English law the Court dismissed the petition. (*Sottomayor v. De Barros*, 49 L. J. P. D. & A. 1.)

36. *Is a suit for divorce on the ground of adultery in the nature of a criminal or a civil proceeding? Is the insanity of the respondent a bar to the suit when the insanity occurred (1) before petition; (2) after petition and before decree nisi; (3) after decree nisi and before decree absolute? If a suit can proceed in any of these cases, how can the respondent be defended? Can a suit be instituted or proceed if the petitioner be or become insane?*

A suit for divorce is rather in the nature of a civil than a criminal proceeding.

(1), (2), and (3). A petition can proceed in any of these cases.

A petitioner, upon proof of the adultery of his wife, is absolutely entitled to a decree dissolving the marriage, unless certain acts mentioned in sect. 31 of 20 & 21 Vict. c. 85, are proved against him. Lunacy is no ground for staying the proceedings, not being either an absolute or discretionary bar to a divorce. (*Mordaunt v. Moncreiffe*, (H. L.) 43 L. J. P. & M. 49; L. R. 2 H. L. Sc. App. 374.)

A committee, duly appointed, of a person found by inquisition to be of unsound mind may take out a citation and prosecute a suit on behalf of such person as a petitioner, or enter an appearance, intervene, or proceed with the defence on behalf of such person as a respondent; but if no committee should have been appointed, application is to be made to one of the registrars, who will assign a guardian to the person of unsound mind, for the purpose of



prosecuting, intervening in, or defending the suit on his or her behalf; provided that, if the opposite party is already before the Court when the application for the assignment of a guardian is made, he or she must be served with notice of such application which is made by summons. (Rule 196; Haynes's Guide to Probate and Divorce, 2nd ed., 89.)

The insanity of the husband or wife is not a bar to a suit on his or her behalf for dissolution of marriage, and such a suit may be instituted by the committee of the estate of the lunatic. (*Baker v. Baker*, 49 L. J. P. D. & A. 49; affirmed on appeal, 49 L. J. P. D. & A. 83; L. R. 5 P. D. 149.)

37. *State the grounds upon which a petition may be presented for the reversal of a decree of judicial separation, and the facts which should appear in such a petition. What step must be taken before it is presented?*

There are only two grounds, viz. :—

(1.) That the decree of judicial separation was obtained by the petitioner in his or her absence. The absence here meant is not an absence from want of notice, but a simple non-appearance to the petition. (*Phillips v. Phillips*, 35 L. J. P. M. & A. 70.) This ground applies to all such decrees.

(2.) That there was reasonable ground for the alleged desertion, if desertion was the ground upon which the decree of judicial separation had been obtained.

The reversal, where the grounds are present, is obtained by petition. The facts which should appear in the petition *besides* those which show that there exist the material grounds upon which it is founded are :—

(1.) The marriage and the name of the place where it was celebrated; and

(2.) The decree of judicial separation. Then follows the prayer for a decree of reversal.

Before, however, presenting the petition for the purpose of being filed, an appearance on behalf of the party praying for a reversal of the decree of judicial separation must be entered in the cause in which the decree has been pronounced. (Rule 64; Browne's Divorce Law and Practice, 142, 507, 560.)

38. Give a definition of the doctrine of "condonation," as recognised in divorce cases, and point out to what extent, and upon what principle, its practical application is affected by the circumstance of whether advantage is sought to be taken of it by a husband or by a wife.

Condonation is "forgiveness of a conjugal offence with the full knowledge of all the circumstances, and is a question of fact and not of law." (*Peacock v. Peacock*, 27 L. J. P. & M. 1; Sw. & Tr. 184.) It is "a blotting out of the offence so as to restore the offending party to the same position he or she held before the offence was committed." Mere forgiveness is not condonation; to be condonation "it must completely restore the offending party, and must be followed by cohabitation." (*Per Lord Chelmsford in Keats v. Keats*, 28 L. J. P. & M. 57.) The condoned offence, if it is condoned, cannot be used for any purpose whatever unless subsequently revived, but as to revival now, see *Rose v. Rose*, *infra*.

It is necessary in considering the question of condonation to divide it into two parts: first, when pleaded by the wife, secondly, when pleaded by the husband; since the most prominent feature in the subject is that a great distinction respecting condonation exists between a husband's adultery and a wife's adultery, and that much would be considered culpable in a husband which is praiseworthy in a wife. (*Per Dr. Lushington, D'Aquilar v. D'Aquilar*, 1 Hag. 786; *Angle v. Angle*, 1 Robert. 641.) It is therefore a far more available defence for a wife than a husband.

"A woman has not the same control over her husband, has not the same guard over his honour, has not the same means to enforce the observance of the matrimonial vow; his guilt is not of the same consequence to her, therefore the rule of condonation is held more laxly against her." (*D'Aquilar v. D'Aquilar*, 1 Hag. 786.)

"The effect of cohabitation is less stringent on the wife; she is more *sub potestate*, more *inops consilii*; she may entertain more hopes of the recovery and reform of her husband." (*Beeby v. Beeby*, 1 Hag. 793; *Turton v. Turton*, 3 Hag. 350.)

"Forgiveness on the wife's part, especially with a large family, in the hope of redeeming her husband, is meritorious; while a similar forgiveness on the part of the husband would be degrading and dishonourable." (*Durant v. Durant*, 1 Hag. 752; *Browne's Divorce Law and Practice*, 94, 95, 99, 100; *Haynes's Probate and*

Divorce Guide, 2nd ed., 88. As to the operation of separation deeds as a condonation, see *Gandy v. Gandy*, 51 L. J. P. D. & A. 41; and *Rose v. Rose*, 52 L. J. P. D. & A. 25.)

39. Define the meaning and leading features of the doctrine of "revival" as applied to matrimonial causes.

Condonation is, it will be remembered, a bar to a petition grounded on the offence forgiven; but "condonation is forgiveness with an implied condition that the injury shall not be repeated, and that the other party shall be treated with conjugal kindness." (*Durant v. Durant*, 1 Hag. 761.) On breach of the condition the right to a remedy for the former injury revives. A slighter offence (though not a slight offence) will revive an offence condoned, and will combine with it so as to operate as a ground for a divorce. Less cruelty is necessary to revive condoned adultery than to found an original suit. Slighter acts than would have sufficed to found an original suit are sufficient to revive condoned adultery. All condonation is thus conditional. The offences need not be *ejusdem generis*; cruelty will revive condoned adultery, and *vice versa*. The revival operates whether it be the ground for a petition, or whether it be pleaded in any stage, as, for instance, as an answer to a suit for restitution of conjugal rights. (Browne's Divorce Law and Practice, 3rd ed., 102—105.) This is now subject to the law as stated in *Rose v. Rose*, *supra*, where it is held that the parties may shut out the doctrine of revival by agreement and let bygones be bygones.

40. What step must be taken before commencing a suit for the restitution of conjugal rights, and upon what evidence will a decree be made where the suit is undefended? A suit for restitution is brought, and facts sufficient in themselves to support a decree are proved. Mention any ground of defence which may nevertheless be fatal to the suit.

A petition for restitution of conjugal rights can only be founded upon one ground—viz., that one of the married persons has withdrawn from living with the other without lawful cause. Before commencing such a suit, however, a written demand for cohabitation and restitution of conjugal rights must be made upon the respondent, and a reasonable opportunity for compliance therewith must have been given and withheld by respondent.

The marriage must be formally proved on the hearing, although the respondent may have admitted it by the answer, though by the leave of the Court it may be done by affidavit.

A decree of restitution will not, however, be granted in an undefended suit upon mere proof of the marriage. Evidence of the other facts of the case must be given; for where at the time of pronouncing a decree of restitution of conjugal rights the respondent was abroad, the Court directed that the decree should be served on the respondent's return to England, and that it should require him to certify within a fortnight after such service that he had obeyed it. (*Manning v. Manning*, 6 Ir. R. Eq. 417; *Pearson v. Pearson*, 33 L. J. P. M. & A. 156.)

In the above case the petitioner is entitled to the decree asked, unless he is proved to have committed a matrimonial offence which would be a ground for a judicial separation. (*Scott v. Scott*, 34 L. J. P. M. & A. 23; *Browne's Divorce Law and Practice*, 83—4.)

41. *From what point of view does the Court for Matrimonial Causes regard private compromises of suits, (a) where the object of the suit is a divorce or judicial separation, (b) where the object is the restitution of conjugal rights?*

(a.) In either of these cases an agreement upon good consideration that the petitioner will withdraw from the suit is binding, if it has not been obtained by fraud or duress. (*Sterbini v. Sterbini*, 39 L. J. P. & M. 82; 22 L. T. 552; *Whitmore v. Whitmore*, 1 Lee, 30.) In another case the Court refused to make an order on a second petition, which was made substantially upon the same grounds as a former petition between the same parties, which former petition had been compromised by agreement. (*Rowley v. Rowley*, 33 L. J. P. M. & A. 54, which was affirmed by the full Court, 34 L. J. P. M. & A. 97, and afterwards by the House of Lords, 35 L. J. P. M. & A. 110; *Browne's Divorce Law and Practice*, 3rd ed., 28, 42, 138.)

(b.) In these cases private compromises are binding for the same reasons, viz.: "It is in the highest degree desirable for the preservation of the peace and the reputation of families that such agreements should be encouraged, rather than that the parties should be forced to expose their matrimonial differences in a Court of Justice. And I must further observe, that so far are suits for restitution of

conjugal rights from being in truth and in fact what theoretically they purport to be, proceedings for the purpose of insisting on the fulfilment of the obligations of married persons to live together, that I have never known an instance in which it has appeared that the suit was instituted for any other purpose than to enforce a money demand." (Sir James Hannen in *Marshall v. Marshall*, 48 L. J. P. D. & A. 49, 52.) His Lordship in that case allowed a previously executed and acted upon deed of separation to be a valid defence to a petition by the wife for restitution of conjugal rights, owing to Judicature Act, 1873, s. 24. (*Marshall v. Marshall*, *sup.*)

42. *Set out accurately the statutory power conferred on the Divorce Court in connection with settlements. Would the power be exercisable in all or which of the following cases, after a decree of dissolution?*

(a) *A marriage of which there has been no issue; (b) a marriage of which there has been issue, but none were living at the time of the decree; (c) a marriage of which there is no issue living when the Court is asked to exercise the power, but issue of which were living at the date of the decree; (d) a marriage of which there is issue living.*

It is enacted by 20 & 21 Vict. c. 85, s. 43, as follows:—"If it shall be made to appear to the Court that the wife is entitled to any property, either in possession or reversion, the Court may order such settlement as it shall think reasonable to be made of such property, or any part thereof, for the benefit of the innocent party, and of the children of the marriage, or either or any of them."

And it is enacted by 23 & 24 Vict. c. 144, s. 6:—"That any instrument executed pursuant to any order of the Court, made under the said enactment before or after the passing of the 20 & 21 Vict. c. 85, at the time or after the pronouncing of a final decree of divorce or judicial separation, shall be deemed valid and effectual in the law, notwithstanding the existence of the disability of coverture at the time of the execution thereof."

And again it is enacted by 22 & 23 Vict. c. 61, s. 5:—"That the Court, after a final decree of nullity of marriage or dissolution of marriage, may inquire into the existence of antenuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such order with reference to

the application of the whole or a portion of the property settled, either for the benefit of the children of the marriage or of their respective parents, as to the Court shall seem fit;" and this extends to a case "where there are or are not children of the marriage" (41 Vict. c. 19, s. 3). (Haynes's Guide to Probate and Divorce, 2nd ed., 96.)

43. *State the principles on which damages against a co-respondent in a divorce suit are assessed, and the functions of the Court and jury in relation thereto. Is evidence of the co-respondent's means admissible, and will an agreement between him and the petitioner be recognised by the Court?*

In the assessment of damages against a co-respondent, the measure of damages is the value of the wife of whom the husband has been deprived (i.e., a drunken wife is not of the same value to a husband as a sober wife). As a general rule, evidence of the co-respondent's means is inadmissible; *semble*, however, that the jury may take his wealth into consideration, if he has used it as a means of seducing the wife. (*Cowing v. Cowing and Wollen*, 33 L. J. P. M. & A. 149.)

On reference to the statute it will be seen that the only duty of the jury in a claim for damages is to ascertain the amount. It is the duty of the Court to direct their application. As to the amount of the damages, the Court is bound by the assessment of the jury, and it cannot recognise any arrangement come to between the parties as to the amount of the damages to be paid. (*Caldwell v. Caldwell and Kennedy*, 3 Sw. & Tr. 259; Browne's Divorce Law and Practice, 3rd ed., 145.)

44. *State the rule as to the competency of husband and wife to give evidence for or against the other in criminal and divorce cases.*

*A. administers a drug to a woman with intent to procure abortion, and marries her after indictment, but before trial. Supposing her evidence to be essential, can the case proceed?*

*A husband presents a petition for divorce on the ground of his wife's adultery. Can the co-respondent call the petitioner to prove that the latter has been guilty of adultery?*

In criminal courts, as a general rule, neither can the husband be a witness for or against his wife, nor the wife be a witness for or against her husband. Not only this, but she or he cannot be a

witness for any person indicted jointly with her husband or his wife where her or his testimony would tend to her husband's or his wife's acquittal respectively, though only remotely, as, for instance, by shaking the evidence of a witness. (*The Queen v. Smith*, 1 Mood. C. C. 289.) And if several prisoners jointly indicted are being tried together, the wife or husband (as the case may be) of one of them cannot be called as a witness for or against any of the prisoners. But to bring the case under this incompetency or exception, the parties must have been actually married; mere cohabitation will not suffice.

There are, however, exceptions to this rule.

(a.) In high treason it is said that husband and wife may bear witness against each other, but no instance can be given of this having been done.

(b.) In cases of personal injury (*i.e.*, assault) by husband to wife and *vice versa*.

(c.) In bigamy, of course, the so-called second wife is a competent witness; also in forcible abduction and marriage, the marriage here being invalid, the parties may give evidence against each other. (Harris's Criminal Law, 388.)

(d.) Also in proceedings under the Licensing Acts. (Powell on Evidence, 4th ed., 47.)

(e.) Also the dying declaration of one murdered by the other. (Powell on Evidence, 4th ed., 47—49.)

(f.) In all indictments and summary proceedings for the purpose of bringing or enforcing a civil right, as non-repairs of highway, workmen's wages, &c. (40 & 41 Vict. c. 14.)

(g.) In respect of statutory separate property under the Married Women's Property Act, 1882, after 1st January, 1883. (45 & 46 Vict. c. 75.)

Parties to any proceeding instituted in consequence of adultery, and their husbands and wives, are competent to give evidence therein. But no witness, whether a party or not, is liable to be asked or bound to answer any question tending to show that he or she has been guilty of adultery, unless such witness has already in the same proceeding given evidence in disproof of his or her alleged adultery. (32 & 33 Vict. c. 68; Haynes's Student's Statutes, 2nd ed., 307.)

No other relationship entitles to exemption. Parents and chil-

dren, brothers, sisters, masters and servants may be, and constantly are, called to give evidence for or against each other. (Harris's Criminal Law, 389.)

In the first case above quoted, coming within class (b), the woman's evidence can be taken.

In the second case above quoted the co-respondent cannot call the petitioner as his witness to prove that he has been guilty of adultery, so as to prevent his obtaining a decree of dissolution of the marriage; but if the husband has denied in his examination-in-chief that he himself has committed adultery (which is not likely as a general rule to be asked him so that he could deny it), he could be cross-examined upon it by the co-respondent or his counsel. The reasons are stated above. (See also Browne's Divorce Law and Practice, 3rd ed., 284.)

45. *Explain and contrast the two modes of intervention open to the Queen's Proctor for preventing a decree of divorce from becoming absolute (a).*

He can either intervene in suits for nullity or dissolution of marriage under the *latter* part of sect. 7 of 23 & 24 Vict. c. 144, by leave of the Court, and then, under the 68th rule, he must take part in the pleadings; or he may intervene under the *former* part of sect. 7, and show cause as one of the public. (Browne's Divorce Law and Practice, 3rd ed., 301.)

The latter part of the 7th sect. is as follows:—

“At any time during the progress of the cause, or before the decree is made absolute, any person may give information to Her Majesty's Proctor of any matter material to the due decision of the case; who may thereupon take such steps as the Attorney-General may deem necessary or expedient; and if from any such information or otherwise the said Proctor shall suspect that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce contrary to the justice of the case, he may, under the direction of the Attorney-General, and by leave of the Court, intervene in the suit, alleging such case of collusion, and retain counsel and *subpœna* witnesses to prove it; and the Court

(a.) The above question has also been asked as follows:—

*In what matrimonial suits and under what circumstances can the Queen's Proctor intervene?*



may order the costs arising from such intervention to be paid by the parties or such of them as it shall see fit, including a wife if she have separate property."

The earlier part of the 7th sect. is as follows :—

During the period between the making of a decree *nisi* and a decree absolute for a divorce, "any person shall be at liberty, in such manner as the Court shall by general or special order in that behalf from time to time direct, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of *material facts not brought before the Court*; and, on cause being so shown, the Court shall deal with the case by making the decree absolute, or by reversing the decree *nisi*, or by requiring further inquiry, or otherwise, as justice may require. (Browne's Divorce Law and Practice, 3rd ed., 298—299.) Previous to that statute the Queen's Proctor had no power to intervene in suits of nullity however collusive or concerted.

Leave to intervene must be obtained from the judge on motion founded on affidavit.

A respondent against whom a decree has been made should not intervene under the above section to show collusion, &c., on the part of the petitioner and co-respondent; but he or she should, if material facts come to his or her knowledge after a decree *nisi* has been made, apply for a new trial. (Browne's Divorce Law and Practice, 300, 301.)

By 41 Vict. c. 19, it is enacted that where the Queen's Proctor or any other person shall intervene or show cause against a decree *nisi* in any suit or proceeding for divorce or nullity of marriage, the Court may make such order as to the costs of the Queen's Proctor, or of any other person who shall intervene or show cause as aforesaid, or of all and every party or parties thereto, occasioned by such intervention, or showing cause as aforesaid, as may seem just; and the Queen's Proctor, any other person as aforesaid, and such party or parties, shall be entitled to recover such costs in like manner as in other cases; provided that the Treasury may, if it shall think fit, order any costs which the Queen's Proctor shall, by any order of the Court made under this section, to be paid to the said party or parties, or to be deemed to be part of the expenses of his office. (Haynes's Probate and Divorce Guide, 2nd ed., 105.)

46. *State shortly (excluding any reference to Scotland from your answer) the objects of the "Legitimacy Declaration Act, 1858," and the personal conditions necessary for enabling advantage to be taken of its provisions; and refer to any judicial decision as to the extent to which the Act was intended to affect the rights of third persons.*

The objects are to enable a petitioner thereunder to obtain a decree of the High Court of Justice, Probate, Divorce and Admiralty Division (Divorce), declaring

(1) The petitioner to be the legitimate child of his parents, and that the marriage of his father and mother or grandfather and grandmother was valid;

Or (2) that his or her marriage was or is valid;

Or (3) that he or she has a right to be deemed a natural born British subject.

One or more applications under the Act may be joined in one petition if so desired.

The personal conditions referred to are: (a) that the petitioner should be a natural born subject of the Queen, or a person whose right to be deemed so depends wholly or partly on his legitimacy or on the validity of a marriage; and (b) that the petitioner must be claiming some real or personal estate situate in England, or must be domiciled in England or Ireland.

The other conditions are: (1) that the Attorney-General must be made a respondent; (2) the petition must be verified by affidavit and state that there is no collusion; and (3) a copy of the petition and affidavit must be delivered to the Attorney-General one month before filing the same.

The judicial decision of the full Court in *Mansel v. The Attorney-General* is the one probably referred to (48 L. J. P. D. & A. 42; L. R. 4 P. D. 232; affirming 46 L. J. P. D. & A. 64; L. R. 2 P. D. 265). There it was decided that it is not competent for the Court to determine the question of the legitimacy or illegitimacy of any person other than that of the party putting it in motion. The petitioner claimed to have his own legitimacy established and his elder brother, who was born out of wedlock, declared illegitimate, and that the petitioner might be declared entitled as heir at law to his father to certain real estate. The Court directed the

petition to be amended by striking out the words to the same effect as those in italics in this answer. The last three words in italics were struck out because the Court would not, in an application under that Act, make the validity of the petitioner's title as heir at law an issue in that proceeding.

---

### ADMIRALTY.

47. Define "*maritime lien*," and state how it is enforceable and how extinguishable. Does such lien arise in an action for necessities against (a) a British ship, (b) a foreign ship?

A maritime lien is a debt or claim privileged to be paid out of the *res ipsa*, whether that be a ship, cargo, or freight, or all or any of them, the condition of the privilege being, that the debt or claim shall have arisen out of such a contract or tort as is cognizable in the Court of Admiralty. (Coote's Admiralty Practice, 2nd ed., 17; and see Haynes's Guide to Admiralty, 2.)

All claims for damage by collision, salvage, towage, pilotage, bottomry, seamen's and master's wages and necessities are in themselves maritime liens. (Boyd's Merchant Shipping Laws, 417.)

The supply of necessities to a foreign ship will confer a maritime lien (*The Ella A. Clerk*, Br. & L. 32); and the lien continues notwithstanding the sale of the ship, if there have been no laches in enforcing it (*The West Friesland*, Swa. 454). But in respect of British ships, the material man (i.e., the person supplying the necessities) acquires no maritime lien, but only a right to sue the ship; his claim against the ship accrues only upon his institution of the suit, and is therefore subject to any registered mortgage at that time subsisting on the ship (*The Pacific*, Br. & L. 243). (Haynes's Guide to Admiralty, 34.)

48. Upon what general principles does the Court act in apportioning a salvage reward, as between the owners and the master and crew of the salving ship?

A salving ship sustains actual damage in performing the service. What regard would the Court pay to this circumstance in adjudicating upon a salvage claim made by the owners, master, and crew?

When the aggregate amount of salvage payable in respect of salvage services has been finally ascertained, the Court may cause the same to be apportioned amongst the persons entitled thereto in such manner as it thinks just. (17 & 18 Vict. c. 104, s. 498.)

In estimating the amount of salvage to be paid, the Court is guided by the consideration of three chief elements:—

- (1.) The extent of the peril of the object saved.
- (2.) Its actual value.
- (3.) The nature of the salvor's services.

In estimating the value of the services rendered, the Court seems guided by different principles in cases where no personal risk is run by the salvors, and cases in which they have exposed their lives. Where no personal risk is run, the extent of the peril of the object saved and its value—although considered—are of minor importance, and the remuneration is based on a calculation of the time and labour expended, skill shown, and capital employed by the salvors; but where the property of the salvors has been exposed to risk, or has suffered loss or damage in the service, the owner is entitled to be compensated for such loss or damage; and where the salvor's ship is lost or damaged while engaged in such service, the presumption is, that it was caused by the necessities of the service. The Court is always inclined to grant increased remuneration where the value of the service rendered has been increased by the use of valuable property, even if no risk has been run of its loss or damage. Steamships come under this rule, as the services they render are usually of a most efficient kind; and consequently increase the amount of benefit the owner of the saved property has received.

Accordingly in the above case the compensation will be increased to the extent of the value of the actual damage sustained above what would have been awarded if no such damage had occurred. (Eustace Smith's Admiralty Law and Practice, 70, 71; *The True Blue*, L. R. 1. P. C. 250; *The Saratoga*, Lush. 318; and see Haynes's Guide to Admiralty, 2 *et seq.*)

49. *Why does the Court hold, as a general rule, that a crew cannot assume the position of salvors in respect of services rendered by them to their ship; and what, if any, exception is admitted to the rule?*

Because the salvage services must be rendered *voluntarily*. (*The Neptune*, 1 Hag. 236.) There may, however, be circumstances under which they may be entitled to claim, *e.g.*, where their contract of service has been ended by a *bond fide* abandonment of the ship at sea (*The Florence*, 16 Jur. 572); or when they have been discharged, either expressly or impliedly, by the master of the ship. (*The Warrior*, Lush. 476; *The Le Jouet*, 3 Ad. & Ecc. 556.)

The officers and crews of ships of war assisting British merchantmen are entitled to salvage for *important* services, *aliter* if slight and not promptly demanded by you. (*The Rapid*, 3 Hag. 419.) But although so entitled, yet the fact that their own property is not risked will be taken into consideration. (*The Earl of Eglinton*, Swa. 7.) By sect. 485 of the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), it is provided that no claim on account of salvage services rendered to any ship or cargo, or to any appurtenances of any ship, by the commander, or crew, or part of the crew, of any of Her Majesty's ships, shall be finally adjudicated upon, unless the consent of the Admiralty has first been obtained as in such section mentioned. But on receiving such consent the officers and crew may recover salvage from the owners of the ship and cargo for services rendered thereto, and for salvage services rendered to passengers belonging to the ship. (*The Alma*, Lush. 378.) (Haynes's Guide to Admiralty, 6—8.)

50. *What is the law with reference to the liability of the owner of a ship which, whilst in charge of a duly qualified pilot, within a district where his employment is made compulsory by law, comes into collision with and damages another vessel through the fault of such pilot? Refer to any statute on the subject.*

The law is, that as a general rule the shipowners will not be liable, being protected by sect. 388 of the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104); but they must meet and rebut any relevant allegation of negligence on their own part. Under this Act, where shipowners have proved fault on the part of the pilot sufficient to cause, and in fact causing, the calamity, they must be held to have satisfied the condition on which their exemption from liability depends; and they are not to be called upon to adduce

proof of a negative character to exclude the mere possibility of contributory negligence. But if, in the course of the evidence, certain acts or omissions on the part of the crew come out, it will then be incumbent on the owners to show satisfactorily that those acts or omissions in no degree contributed to the damage. (*Clyde Navigation Company v. Barclay*, 1 App. Cas. 790.) Where there was neglect on the part of the master and crew to keep a good look-out, and such neglect conduced to a collision, the owners were held liable for the damage. (*The Iona*, 1 P. C. 426.) When the defendant has proved that his vessel was compulsorily under the charge of a pilot, it lies on the plaintiff to establish such fault or negligence, other than that of the pilot, as contributed to the collision. (*The Marathon*, 48 L. J. P. D. & A. 17.) (Haynes's Admiralty Guide, 21.)

51. *State shortly the general principles (irrespective of any statutory limitation as to the liability of owners) upon which the Court proceeds in assessing damages in cases of collision, distinguishing between cases of total loss and those of injury.*

Subject to the statutory limitation of the owner's liability as stated in the preceding answer, the rule is, that the ship causing the injury is bound to make full compensation for the wrong done. The maxim is *restitutio in integrum* (*The Clyde*, Swa. 24; *The St. Olaf*, L. R. 2 A. & E. 360), and all the direct consequences of the injury, such as the loss of freight, detention, expense, and so on, are to be taken into consideration. (Boyd's Merchant Shipping Laws, 260; *The Mellonia*, 3 W. Rob. 13.) This does not of course include damages which arise after the collision, and which might have been avoided by the exercise of ordinary nautical skill. (*The Flying Fish*, Br. & L. 436.)

Interest is allowed on the amount recovered, computed from the time when the loss was sustained; *e.g.*, where a ship carrying cargo is lost, interest is allowed on the value of the ship, plus the amount of freight from the time when the ship would have arrived at her destination; or where she is not carrying a cargo, on her value at the date of her loss. (See *Straker v. Hartland*, 5 N. R. 163.)

The statutory limitation of the owner's liability does not apply to interest, that being given by reason of the detention of payment,



*53. State concisely the origin and extent of the jurisdiction now exercised by the Probate, Divorce and Admiralty Division for the protection of the interests of mortgagees of ships and freight; distinguishing, in the case of ships, between registered and unregistered mortgages.*

The Probate, Divorce, and Admiralty Division, like the old Admiralty Court, possesses no original jurisdiction over mortgages, but it now has jurisdiction in two cases, (1) where any ship is under arrest by the Court, or the proceeds have been brought into the registry, and (2) where the ship is registered under the Merchant Shipping Act, 1854. The mortgagee acquires an ownership in a vessel when he takes actual or constructive possession of the property. But the mortgagor retains all the rights and powers of ownership subject to the mortgage and all his contracts relating to the ship will be valid, provided he does not materially impair the security of the mortgagee. The mortgage to be a legal one, must be in the form prescribed by the Merchant Shipping Act, 1854, and registered with the Registrar of the Port at which the ship is registered, and if made in such form is exempt from stamp duty. The Court looks to the intention of the parties, and if it appears that a transaction was intended to be a mortgage, although in form an absolute bill of sale, such an instrument is not exempt from stamp-duty.

The mortgagee takes subject to all maritime liens, *i. e.*, claims for bottomry, wages, salvage and damage; a claim for necessaries does not give a maritime lien unless supplied to a foreign ship. Every registered mortgage confers a power of sale. The priority of registered mortgagees, *inter se*, is according to the order of time in which they were produced to the Registrar to be recorded. An unregistered mortgage is good as against every one except registered transferees or mortgagees, but will be postponed to a registered mortgage, even although the latter was granted at a later date. (Eustace Smith's Summary of Admiralty Law and Practice, 58, 59; and see Haynes's Guide to Admiralty, 27, 28.) It may be mentioned that an agreement to sell a ship is binding, though not in the form of a bill of sale. (*Buttkyany v. Bouch*, 50 L. J. Q. B. 42.)

*54. When is the master of a ship clothed in law with implied*



*authority to hypothecate the ship for the repayment of an advance for repairs, and on whom does it rest to show that the conditions necessary to support such a contract existed when it was made?*

*Does the same authority extend under any, and if so, what circumstances to the cargo?*

The conditions necessary to clothe the master with implied authority to hypothecate the ship for the repayment of an advance for repairs are:—(1.) The repairs must be necessary in the sense that if they are not done the prosperous completion of the voyage will be prevented. (2.) The impossibility of obtaining a loan on personal credit, and the circumstances such that the master is unable to communicate with the owners within a time commensurate with the necessities of the ship (*La Ysabel*, 1 Dodson's Adm. Reports, 273; *Wallace v. Fielden*, 7 Moore P. C. 398; Tudor's L. C. Merc. Law, 58–64). It rests upon the lender to show that the conditions necessary to support such a contract existed when it was made, or else that he could not by due inquiries have learned the facts. Moreover the repayment of the money lent must depend on the safe arrival of the ship, or it is not a bottomry bond such as the master is justified in making without the owner's express consent. (*Stainbank v. Shepherd*, 13 C. B. 418; Tudor's L. C. Merc. Law, 57; Eustace Smith's Admiralty, 63.)

The same authority extends to the cargo provided the security of the ship is not sufficient, so that the master is unable to raise money on that alone, and provided also that the money is borrowed either for the repairs of the cargo, or for the better repairs of the ship in cases where such repair is necessary for the better preservation of the cargo. (*The Gratitude*, 3 Ch. Rob. Adm. Rep. 240; Tudor's L. C. Merc. Law, 30.)

55. *Explain the nature and objects of an action for possession in Admiralty matters.*

*In such an action the owners of forty shares in the ship agree on a certain voyage, but the owners of the remaining shares dissent. How will the Court deal with the matter?*

The jurisdiction of the Admiralty Division in actions of possession is peculiar to Admiralty, and has no fellow process at Common Law. Under ordinary circumstances, if a personal chattel is

wrongfully detained from its owner, his only remedy is generally against the wrongdoer by a personal action to recover damages ; if a ship, however, is wrongfully detained, the ship itself, by process in the Admiralty Court, may be at once arrested and proceeded against, and a specific decree obtained, restoring it to the owner. (Williams and Bruce on Admiralty, 17, 18.) This jurisdiction is exercised for a fourfold purpose.

1. To place claimants in possession of the ship.
2. To place claimants in possession of the earnings of the ship.
3. To enable the ship to be employed.
4. To examine accounts between co-owners and to apportion the earnings after such examination. (Roscoe on Admiralty, 49.)

In any action of possession the Court may decide all questions as to title or ownership of any ship or vessel, or the proceeds thereof, remaining in the registry (3 & 4 Vict. c. 65, s. 4, and 24 Vict. c. 10, s. 8), settle all accounts outstanding and unsettled between co-owners, and direct the ship, or any share thereof, to be sold. (24 Vict. c. 10, s. 8.)

Where a dispute arises between the owners of a ship, and the owners of more than a moiety of the sixty-four parts wish to employ her in making a voyage, the Court will decree possession of the ship to such majority, in order that she may be employed in the voyage. The plaintiffs will, however, be required to give security for the safe return of the vessel to the amount of the interest of the minority. The minority are entitled to bring an action of restraint to enforce their right of security. And the ship may be arrested until a bond is given for the required security. The Court considers both legal and equitable rights in determining the majority, and all owners who do not support the application are presumed to be content that the possession of the ship should remain as it is. The minority are not required to furnish any part of the cost of the voyage, and do not share in the profits of it, and are not entitled to any allowance for the depreciation of the ship caused by the ordinary wear and tear of the voyage. If the ship be lost the Court will order the immediate payment of the amount secured. (See Williams and Bruce on Admiralty, 19—22 ; Roscoe on Admiralty, 50, and cases there referred to ; Smith's Summary of Admiralty Law, 32, 33 ; Haynes's Guide to Admiralty, 34—36.)

56. *Would the doctrine of the Law Maritime that seamen have a lien on ship and freight for wages due to them extend to all or any of the following cases :—*

(a.) *Wages due to a master employed by a person who has fraudulently obtained possession of the ship, the master being innocent of the fraud ;*

(b.) *A sale of the ship to a bonâ fide purchaser without notice ;*

(c.) *Wages earned respectively before and after the giving of a Bottomry Bond ;*

(d.) *An established claim for salvage services ;*

(e.) *An established claim for damages by collision ?*

(a.) Yes, provided the master is both ignorant and innocent of the fraud. (*The Mary Ann*, L. R. 1 Ad. 8 ; see also *The Edwin*, Br. & L. 201.)

(b.) Yes. The purchaser, however *bonâ fide*, takes subject to all liens attaching to the ship (not cargo), unless the sale is made under the authority of a competent Court. (Coote's Admiralty Practice, 2nd ed. 20.)

(c.) The lien for wages whether earned before or after the giving of a bottomry bond would prevail against the bottomry bond. (*William F. Stafford*, Lush. 69 ; *The Union*, Lush. 128 and 137.)

(d.) Yes, unless the wages were earned before the salvage services were rendered when they would, according to the general rule, rank against the *res* in the inverse order of their attachment.

(e.) Yes ; but the claim for damages has priority over that for wages, subject to the last mentioned rule. (Eustace Smith's Adm. 30.)

57. *State the rule for the order of attachment of claims against the res in Admiralty proceedings, and enumerate and arrange in the order of their priority the various kinds of claims.*

*If the master of a vessel be part owner, does it affect the position of his claim for wages and disbursements ?*

It is an invariable rule that claims against the *res* rank in the reverse order of their attachment ; the last in time is the first to be satisfied. Subject to this general principle their respective places are : —

- (1.) Salvage of life.
- (2.) Salvage of property.
- (3.) Claims for damage.
- (4.) Wages and disbursements of seamen and master.
- (5.) Bottomry.
- (6.) Mortgage.
- (7.) Necessaries, so far as regards British ships.

It does not matter whether the master is part owner or not to enable him to claim for wages or disbursements. (*The Feronia*, L. R. 2 A. & E. 65; Roscoe's Admiralty Practice, 62; Haynes's Guide to Admiralty, 43.)

58. *By whom, and under what circumstances, may a cause of forfeiture be instituted in the Admiralty Division? What is the effect of a decision in favour of the party instituting the cause, and what the effect of a decision adverse to him, and what is the authority for the exercise of the Court's jurisdiction?*

A cause of forfeiture against an offending ship may be instituted by any commissioned officer on full pay or any British officer of customs or any British consular officer by an ordinary action in the Admiralty Division, the ship having been first seized by the party instituting the action. A ship is forfeited to the Crown—(1) if any unauthorised person on board thereof uses the British flag and assumes the British national character; (2) if the owner or master does any act or permits papers to be carried with intent to conceal the British character of the ship; (3) if any unqualified person obtains a legal or beneficial interest in a British ship; (4) if any person claiming an interest therein makes a false declaration touching his qualification to own British ships.

The effect of a decision in favour of the party instituting the cause will be that the forfeiture will be held to relate back to the time when the wrongful act was done so as to override the right of a subsequent *bonâ fide* purchaser without notice of the fraud. The effect of a decision adverse to the party instituting the action may be that he will have to pay damages and costs. (*The Leda Browning*, and Lushington's Admiralty Reports, 69; 17 & 18 Vict. c. 104, s. 103; *The Annandale*, L. R. 2 P. D. & A. 179, 218; Roscoe's Admiralty Practice, 60; Haynes's Guide to Admiralty, 41, 42.)

59. *Would an action in rem lie to enforce a judgment of a foreign Court operating by the law of the foreign country—*

(1.) *Against the ship itself;*

(2.) *Against the captain or owners personally?*

*Explain the principle which governs each of the supposed cases.*

(1.) Yes; because the judgment confers a maritime lien, and the judgment can only be impeached by the English Court on proof of fraud. (*Castrique v. Imrie*, 39 L. J. C. P. 350; L. R. 4 E. & L. App. 414; *The Bold Buccleugh*, 7 Moore, P. C. 264.)

(2.) No; because the judgment would be a judgment *in personam*, and would not give a maritime lien to the plaintiffs who obtained it. The judgment against the captain or owners personally being a judgment *in personam* cannot be enforced here by an action *in rem*. (*The City of Mecca*, 50 L. J. P. D. & A. (App.) 53; L. R. 6 P. D. 106.)

"It is part of the law of nations that Courts of Admiralty in different countries have the power to condemn vessels and order them to be sold for the satisfaction of a maritime lien. Maritime liens are always recognised by all civilised nations." (Per Lush, L.J., in *The City of Mecca*, *suprà*.) "This claim or privilege (*i.e.*, the maritime lien) travels with the thing into whosoever possession it may come. It is inchoate from the moment the claim or privilege attaches, and when carried into effect by legal process by a proceeding *in rem* relates back to the period when it first attached." (*The Bold Buccleugh*, *suprà*.)

---

#### ECCLESIASTICAL LAW.

60. *What propositions have been established by judicial decision as to the construction of the rubric in the commencement of the Prayer Book, which provides that, "Such ornaments of the Church and of the ministers thereof at all times of the ministration shall be retained and kept in use as were in this Church of England by the authority of Parliament in the second year of the reign of King Edward the VI.?"*

The above quotation is taken from the ornaments rubric of 1662, and was construed in *Ridsdale v. Clifton* (46 L. J. P. C. C. 27; L. R. 2 P. D. 276) to mean (1) that the proper ornament of the minister in the ministration of the Holy Communion and other rites in parish churches is a surplice only; and (2) that a crucifix placed on a screen separating the chancel from the body of the church is not a lawful church ornament.

61. *What general doctrines have been laid down by the Privy Council in ecclesiastical cases* (1) *as to the theological soundness or unsoundness of opinions*; (2) *as to the construction of the Articles and Liturgy*; (3) *as to different interpretations of which the Articles admit*; (4) *as to jurisdiction to settle matters of faith?*

"We have not been unmindful of the latitude wisely allowed by the articles of religion to the clergy so as to embrace all who hold one common faith. The mysterious nature of many of the subjects associated with the cardinal points of this faith must of necessity occasion a great diversity of opinion, and it has not been attempted by the articles to close all discussions or to guard against varied interpretations of Scripture with reference even to cardinal articles of faith, so that these articles are themselves plainly admitted in some sense or other according to a reasonable construction or according even to a doubtful but not delusive construction. Neither have we omitted to notice the previous decisions of the Ecclesiastical Courts, and especially the judgments of this tribunal (*i.e.*, Her Majesty's Privy Council) by which interpretations of the articles of religion, which by any reasonable allowance for the variety of human opinion can be reconciled with their language, have been held to be consistent with a due obedience to the laws ecclesiastical, even though the interpretation in question might not be that which the tribunal itself would have assigned to the Article. . . . We have been mindful of the authorities which have held that pious expressions of devotion are not to be taken as binding declarations of doctrine. But the appellant will, we think, himself feel how impossible it is that any society whatever of worshippers can be held together without some fundamental points of agreement, or can together worship a Being in whom they have no common faith."

(See judgment in the case of the *Rev. Charles Voysey, Clerk, Appellant v. Thomas Shepherd Noble, Respondent*, 40 L. J. Eccles. Cas. 11.)

The successive alterations and omissions in the Book of Common Prayer, by which words or passages inculcating particular doctrines, or assuming a belief in them, have been struck out, are evidence that the Church has ceased to affirm those doctrines; but the effect of such changes when they stand alone, is that it ceases to be unlawful to contradict such doctrines, and not that it becomes unlawful to maintain them. (*Sheppard v. Bennett*, 41 L. J. P. C. 1.)

62. *What courses of judicial exposition are applied to the construction of the Articles and formularies of the Church?*

*Apply these rules to a case in which an Article admittedly of doubtful interpretation has been construed by the person charged with publishing doctrines contrary to it in a sense different to that in which the Court (on argument) considers to be supported by the greater weight of reasoning.*

It has been held by the Judicial Committee of the Privy Council that where a party is charged with having propounded doctrines contrary to those laid down in the Articles, the Court must ascertain on the ordinary principles of construction what is the true meaning of the Articles and formularies referred to in the charge and alleged to be infringed. The Judicial Committee is not compelled to affix a definite meaning to any given article of religion, the construction of which is fairly open to doubt; and that if any article is really a subject of dubious interpretation, it would be highly improper that the Court should fix on one meaning and prosecute all those who hold a contrary opinion regarding its interpretation. Thus, it has been decided that the doctrine of the inspiration of the whole of Scripture is not so plainly taught by the articles of the Church as to be binding on every clergyman. (*Williams v. Bishop of Salisbury* and *Wilson v. Fenlull*, 2 Moore, P. C. N. S. 375, 424; *Mozley's Law Examination Journal*, No. 51, p. 212.)

63. *What are the obligations of a beneficed clerk in holy orders as to the performance of divine service, and how may such obligations be affected by the circumstance that the benefice comprises two churches?*

By the general law the church service according to the form prescribed in the Book of Common Prayer is to be regularly performed every Sunday in the morning and evening. If less duty is required any relaxation must be adopted with the approbation of the Diocesan, who is to judge of the degree to be allowed, and the minister must strictly adhere to the terms prescribed and not vary them for his own convenience. (Sir William Scott, in *Bennett v. Bonaker*, 1 Hagg. Ecc. 25.) And by statute 58 Geo. III. c. 45, s. 65, the bishop of the diocese may, if it should appear to him that the existing accommodation of a church is not sufficient for the parishioners or inhabitants to attend divine service, require the incumbent to nominate a curate to perform a third or additional divine service with a third sermon on Sundays and on the great festivals, in which case such incumbent within six months after such requisition must nominate the curate, and in default of his so doing, the bishop may nominate and license a proper curate for the purpose. And by statute 1 & 2 Vict. c. 106, s. 80, the bishop is empowered to order that there shall be two full services, each of such services, if the bishop shall so direct, to include a sermon or lecture on every Sunday throughout the year, or part thereof, in the church or chapel of every or any benefice within his diocese, whatever may be the annual value or the population thereof; and also in the church or chapel of every parish or chapelry where a benefice is composed of two or more parishes or chapelries in which there shall be a church or chapel, if the annual value of the benefice arising from that church or chapelry shall amount to £150, and the population of that parish or chapelry shall amount to 400 persons. There is a proviso added to the section that nothing therein is to be taken to repeal 58 Geo. III. c. 45, s. 65, above referred to. (Mozley's Law Examination Journal, No. 50, p. 175.)

64. *State shortly the machinery provided by the Ecclesiastical Dilapidations Act, 1871, for dealing with ecclesiastical dilapidations on the avoidance of a benefice. A. and B. agree to exchange livings without payment on either side for dilapidations. Is such an agreement valid in itself, and does the Act apply?*

On the decease of an incumbent his representatives are not liable on any claims for dilapidations if he holds a certificate of a diocesan



surveyor granted within five years of his decease, unless for wilful waste or damage by fire when he was not properly insured. In cases where no such certificate has been granted, his representatives are liable for dilapidations, but the claim must in every case be founded on a report of the diocesan surveyor. On any vacancy (except where a certificate of repairs granted within five years is held) through death, or otherwise, an inspection by the diocesan surveyor must be directed by the bishop within three months of its occurrence, and objections may be taken to it both by the new incumbent and the one who is leaving the benefice, or by the representatives of the deceased incumbent. The sum ordered to be paid for dilapidations is recoverable as a debt due from the representatives of the late incumbent to the new one. (34 & 35 Vict. c. 33.) The agreement in the above case is not simoniacal, and does not contravene the above-named Act. (*Wright v. Davies*, (App.) 46 L. J. C. P. 41; L. R. 1 C. P. D. 638; E. Smith's Ecclesiastical Law and Practice, 61, 62.)

65. *What is the general right of the ordinary as to the arrangement of seats in a parish church, and in what cases (other than those in which a faculty has been obtained by the person claiming adversely to the ordinary) and upon what evidence may this right be displaced as to any particular pew? A petition is presented by the vicar and churchwardens of a parish church praying for a faculty for repairs and alterations in the church. A parishioner desires to oppose the application, upon the ground that the faculty asked for would derogate from rights claimed by him as to a particular pew. What will be his proper mode of procedure?*

A pew is somewhat in the nature of an heirloom, and may descend by immemorial custom, without any ecclesiastical concurrence, from an ancestor to his heir. (See Cripps's Law of the Church and Clergy, 5th ed., 467.)

The right to sit in a particular pew in the church arises either from prescription as appurtenant to a messuage, or from a faculty or grant from the ordinary, for he has the disposition of all pews which are not claimed by prescription. All other pews and seats in the body of a church are the property of the parish; and the churchwardens, as the officers of the ordinary, and subject to his

control, have authority to place the parishioners therein. (See 3 Steph. Com., 7th ed., 314; 3 Hagg. Ec. Rep. 733; 1 Phil. Rep. 324; and see 19 & 20 Vict. c. 104, ss. 5—8; 32 & 33 Vict. c. 94; and Wharton's Law Lexicon, 6th ed., 722.)

The parishioner should in the above case appear at the hearing by counsel, and be prepared to support his title to the pew, if necessary, and the Court will either refuse to grant a faculty at all, or will do as was done in the case of *Knapp v. St. Mary, Willesden* (2 Rob. Ec. Rep. 358), grant the faculty with a proviso therein that the pew in question should not be removed or altered. The Prescription Act does not apply to a claim by prescription to use a particular pew. (*Crisp v. Martin*, L. R. 2 P. D. 15.)

66. *Explain and distinguish the characteristics and mode of transfer of an advowson appendant and an advowson in gross, and point out how an advowson appendant may become an advowson in gross, and in what, if any, circumstances it may revert to its original appendancy.*

An advowson is an incorporeal hereditament, and consists of a perpetual right of presentation to an ecclesiastical benefice. The patron as such, however, has no property or interest in the glebe or tithes, which belong to the incumbent. An advowson appendant is one which is attached to a manor, and passes with a conveyance of the manor, even by feoffment, without mentioning the appurtenances, and independently of the Conveyancing and Law of Property Act, 1881, let alone any mention of the advowson itself, except where the advowson is expressly reserved; an advowson in gross, like a manor, with an advowson appendant forming part of it, may be conveyed by act of the parties by deed or will, or by operation of law it will descend to the heir-at law on intestacy.

An advowson appendant may become separated from the manor by an express separate grant or devise of the advowson independently of the manor, or, as above stated, by a grant or devise of the manor, with an express reservation of the advowson. In either event the advowson ceases to be an advowson appendant, and thenceforth becomes an advowson in gross, which is a distinct subject of property unconnected with anything corporeal. When once severed from its manor and made an independent incorporeal

hereditament the advowson can never become appendant again when the severance takes place by operation of law, nor when it takes place by act of the parties, unless such severance was only conditional in the first instance, when it remains in gross until the condition is fulfilled. (Williams's Real Property, 11th ed., 337 ; Tudor's L. C. Real Property, 3rd ed., 257 ; *Rex v. Bishop of Chester*, 2 Salk, 24.)

Advowsons are also divided into—

- (1.) Advowsons presentative ;
- (2.) Advowsons collative ; and
- (3.) Advowsons donative.

In the first kind the patron presents the bishop, institutes the proposed clergyman, and causes him to be inducted into the particular living.

In the second kind the bishop has both the right of presentation and institution in his own hands.

In the third and most rare kind the patron's deed of grant is alone sufficient to complete the proposed clergyman's title to the living. (Wharton's Law Lexicon, 6th ed., 38.)

The sale of an advowson will not include the right to the next presentation, unless made when the church is full, that is, before the right to present has actually arisen by the death, resignation, or deprivation of the former incumbent, for a sale of the next presentation would fall within the offence of simony. But before a vacancy has actually occurred, the next presentation, or right of presenting at the next vacancy, may be sold, either together with or independently of the future presentations of which the advowson is composed, and this is frequently done. When the next presentation is sold independently of the rest of the advowson, it is considered as mere personal property, and will devolve in case of the decease of the purchaser before he has exercised his right on his executors. (Williams's Real Property, 11th ed., 338, 339.)

67. *Distinguish between suits of criminal and those of civil character in the Ecclesiastical Courts, and state who may institute them respectively, and by what forms of proceedings. Give examples of each.*

The proceedings in civil and criminal suits are in the main the

same. They have, however, some important differences which must be borne in mind, the chief of which are as follows:—

*Firstly.* That criminal suits are open to any person, and may be commenced by a person whether he has any right to be protected or not, *e.g.*, by a dissenter; while civil suits can only be brought by a person showing some interest to be protected by the suit. In criminal suits the office of the judge is promoted, that is, the proceedings are taken nominally in the name and under the sanction of some bishop. The bishop may refuse his sanction, but if he give it he has no control over the proceedings. The suit does not abate by the death of the bishop or by his resignation of his see, but the title of the suit in each case must be changed.

Where the promotor dies a proper person may be substituted in his place to carry on the suit.

*Secondly.* The first plea in a civil suit is called the libel, while in criminal suits it is styled the articles. In civil suits the plaintiff can require personal answers on oath from the defendant, *i.e.*, require him to admit facts in his knowledge, whereas the defendant cannot be called upon to answer in a criminal suit.

*Thirdly.* When criminal proceedings are taken against a person in holy orders, the proceedings are taken under the Church Discipline Act.

Both kinds of suits may be commenced in three ways, *viz.*, by citation, by decree, and by monition. A fourth way, by act on petition, is practically only applicable to civil suits. The most usual method is by citation.

Civil suits are brought in respect of rights partly of a *civil* and partly of a *spiritual* character, and are limited to subjects connected with the moral principles or the legal establishment of the church.

Ordinary instances of civil suits are suits for the perturbation of a pew or church seat, the subtraction of church rates, and the granting of faculties. Criminal suits are proceedings to punish and reclaim a sinful offender, by judicial admonition or an infliction of the severer censure of the church. They include church discipline and the correction of all offences of a spiritual kind. Criminal suits purport to be brought *pro salute animæ*, and are directed to the reformation of the offender's manners and excesses. (Coote's Ecclesiastical Practice, 104, 260; E. Smith's Law and Practice of the Ecclesiastical Courts, 81, 82, 77.)

68. *A monition is issued to an incumbent and churchwardens ordering them to remove certain ornaments, or to show cause to the contrary. What facts relating to the promovent personally, must be stated on the face of the monition in order to support it as a good pleading; and what principle of ecclesiastical law is involved in the fact so to be stated?*

The monition must show on its face such an interest in the person by whom it is set in force as would have entitled him to institute and carry on a civil suit in the ordinary way by citation, and must therefore contain an allegation that the person instituting the proceedings has the status of parishioner of the parish. The principle of ecclesiastical law involved is that the person instituting the proceedings must have an interest, and that interest must appear in the monition. (*Fagg v. Lee*, L. R. Adm. Ecc. 135, 153; *Mozley's Law Exam. Journal*, No. 49, p. 137.)

69. *By the 3rd and 13th sects. of the Church Discipline Act, 1840 (3 & 4 Vict. c. 86), a special function is assigned to the bishop of the diocese in which an offence by a clerk in holy orders is alleged to have been committed, in connection with the institution of preliminary proceedings against such clerk under the Act. State the nature of this special function, and refer to and explain the practical effect of the judicial interpretation which has been placed upon these enactments by the House of Lords.*

By 3 & 4 Vict. c. 86, s. 3, it is provided that "in every case of any clerk in holy orders who may be charged with any offence against the laws ecclesiastical, or concerning whom there may exist scandal or evil report as having offended against the said laws, *it shall be lawful* for the bishop of the diocese within which the offence is alleged or reported to have been committed, on the application of any party complaining thereof, or if he shall think fit, of his own mere motion to issue a commission . . . for the purpose of making enquiry as to the grounds of such charge or report "

By sect. 13, it is further provided that "it shall be lawful for the bishop, if he thinks fit, to send the case by letters of request to the Court of Appeal of the province there to be heard and determined."

By 37 & 38 Vict. c. 85 (The Public Worship Regulation Act, 1874), which also applies to the facts in the case to be presently quoted, there is no provision for the summoning of a commission of enquiry, but three parishioners can make an application to the bishop, who then has an arbitrary discretion to determine whether the suit shall proceed or not. It is further provided by sect. 18 that where sentence has been pronounced against an incumbent for an offence under 3 & 4 Vict. c. 86, he shall not also be proceeded against under the later Act, and *vice versa*.

Where a parishioner of the parish of C. made a complaint to the bishop under sect. 3 of the earlier Act in respect of offences against the laws ecclesiastical, the bishop declined to issue a commission or to send the case to the Provincial Court, not on the ground that the matters complained of were not offences against the ecclesiastical law, or were of too unsubstantial a character to call for enquiry, but on the ground that the rector was of advanced age, and that the complaint was made in opposition to the expressed wishes of the great majority of the parishioners. A writ of *mandamus* was then applied for directed to the bishop commanding him to issue a commission to enquire into the matter of the complaint, or to send the case to the Provincial Court by letters of request. It was, however, held (by the House of Lords), that the above-mentioned sections do not prescribe two alternative courses, one of which must be taken, but that the bishop has a discretion, so that he can refuse to allow any proceedings to be instituted against a clerk accused of ecclesiastical offences. (*Julius v. The Bishop of Oxford*, (H. L.) 49 L. J. Q. B. 517; Law Rep. 5 App. Cas. 214.)

The words "it shall be lawful," when used in a statute, are in themselves always permissive, not compulsory. Where it has been held that there is an obligation to exercise an authority conferred by such words, the obligation must be found in the context of the statute, or in the nature of the act authorised. (*Ibid.*)

70. *Contrast the modes of instituting proceedings under the Church Discipline Act, 1840, and the Public Worship Act, 1874.*

All criminal proceedings against clerks in holy orders are now regulated by the Church Discipline Act, 1840 (3 & 4 Vict. c. 86). In any case where a clerk in holy orders is charged with any

offence against the laws ecclesiastical, or scandal or evil report exists concerning him, the bishop of the diocese within which the offence is alleged to have been committed has a discretion to issue his commission to make an enquiry as to the grounds of such charge or report, on the application of any party complaining or on his own motion. Before he issues such a commission, the bishop must give fourteen days' notice to the accused of his intention to issue it, and the notice must state the offence, with the name, addition, and residence of the relator.

Instead of issuing such commission the bishop may, in his discretion, at once send the case by letters of request to be tried in the Court of Appeal of the province. All proceedings under this Act must be commenced within two years after the commission of the offence charged, unless conviction for the offence has been obtained in any court of common law. Where a conviction has been so obtained proceedings may be brought within six calendar months after such conviction.

The Public Worship Regulation Act, 1874 (37 & 38 Vict. c. 85), merely provides a more expeditious mode of proceeding in six classes of cases (mentioned in the Act) than is provided under the ordinary procedure of the Court. Proceedings under this Act are commenced by a representation made to the bishop that one or more of the six cases has occurred. The representation may be made by (1) the archdeacon of the archdeaconry within which the church or burial-ground is situated ; or (2) a churchwarden of the parish ; or (3) three parishioners of the parish ; or (4) in the case of a cathedral or collegiate churches, any three inhabitants of the diocese. The representation must be accompanied by a declaration, by the persons making it, that they are members of the Church of England. Under both Acts the bishop has a judicial discretion to allow the proceedings to continue or not. (E. Smith's Summary of Ecclesiastical Law and Practice, 91—98.)

## APPENDIX A.

---

THE  
QUESTIONS SET IN THE HONOURS EXAMINATION HELD IN  
JANUARY, 1883 ; WITH THE ANSWERS THERETO.

---

1. PRINCIPLES OF THE LAW OF REAL AND PERSONAL PRO-  
PERTY AND THE PRACTICE OF CONVEYANCING.

1. *In a sale by auction of freehold, copyhold and leasehold property, what usual conditions of sale are still necessary ? and what conditions, which were formerly usually inserted, are rendered unnecessary by the Conveyancing Act of 1881 ?*

Besides any special conditions rendered necessary by the state of the particular title, the following are the usual conditions still necessary :—

1. As to amount of bidding, and whether vendor sells with or without reserve, or subject to right to bid (30 & 31 Vict. c. 48).
2. As to deposit.
3. As regards the leasehold property, the tenant's fixtures, and as regards the freehold property, the timber, shall be purchased at a valuation.
4. The date and description of instrument which vendor has selected as the commencement of his title.
5. As to identity of property sold with property described in title deeds.
6. As to errors of description.
7. As to payment of balance of purchase-money and execution of assurance.



8. Vendor to pay all outgoings up to completion.

9. Purchaser to pay interest on total purchase-money, until actual completion, if purchase not completed on date agreed upon.

10. As to acknowledgment and undertaking (if any) which vendor or largest purchaser shall give.

11. As to delivery of abstract of title and requisitions, and power to rescind contract by vendor if he is unable or unwilling to remove purchaser's objections to his title.

12. Purchaser to take copyhold property subject to existing incidents and easements.

13. Power to purchaser to re-sell, and deposit to be forfeited if purchaser does not comply with conditions of sale.

The Conveyancing and Law of Property Act, 1881, has dispensed with the future use of the following conditions :—

(a.) Upon the sale of a term of years derived out of a leasehold interest in land the intended assign shall not have the right to call for the title to the leasehold reversion.

(b.) Where land of copyhold or customary tenure has been converted into freehold by enfranchisement, the purchaser shall not have a right to call for the title to make the enfranchisement.

(c.) Purchaser shall not call for earlier title than that prescribed by law, or stipulated for as the commencement of title, and shall assume all recitals of earlier title to be correct.

(d.) Where land is sold under a lease (not being an underlease) the purchaser shall assume that the lease was duly granted ; and on production of receipt for the last payment of rent due under the lease, before the date of actual completion of the purchase, he shall assume that all the provisions of the lease have been duly performed and observed up to the actual completion unless the contrary appears as regards either fact.

(e.) Where the land sold is held under an underlease the purchaser shall assume the same as in the last case, with the addition that the purchaser is to assume the same facts as regards every superior lease unless the contrary appears.

(f.) On the sale of any property the expenses of the production and inspection of all documents in the vendor's possession, and the expenses of all journeys for the purpose of such production and inspection, and the expenses of searching for, procuring, making, verifying, and producing all certificates, declarations,

evidences and information not in the vendor's possession and all attested, stamped, office or other copies or abstracts of, or extracts from, any documents aforesaid not in vendor's possession, if any such production, inspection, journey, search, procuring, making, or verifying is required by a purchaser either for verification of the abstract or any other purpose, shall be borne by the purchaser who requires the same; and where the vendor retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.

(g.) On a sale of any property in lots, a purchaser of two or more lots held wholly or partly under the same title shall not have a right to more than one abstract of the common title, except at his own expense. These latter conditions are dispensed with in the case of sales of any real or personal property made after 31st December, 1881, except in the case of a contract for a mortgage or a lease. Any express conditions will prevail over any of the above now implied conditions. The implied conditions do not fetter the Court as regards granting or refusing specific performance of a contract, any more than the Court would be fettered if the implied conditions were expressly mentioned in the contract or conditions of sale. (See Clerke and Brett's Conveyancing Act, 1881, 23—29).

2. *Estates are devised by the will of A. to B. (his eldest son) for life, with remainder to B.'s first and other sons in tail male, with remainder to C. (his second son) for life, with remainder to C.'s first and other sons in tail male, with like remainders to D., E. and F. (his third, fourth and fifth sons) for life, and their first and other sons successively in tail male, with an ultimate devise by way of remainder to the right heirs of A. B. succeeds to the estates, but dies intestate and unmarried. C. thereupon succeeds, but dies without issue, having by his will devised and bequeathed all his real and personal property to his wife. D. thereupon succeeds, and during his life E. and F. die without issue. D. dies without male issue, having by his will devised all his real estate to the eldest of his three daughters. Who, on D.'s death, is entitled to the estates? State the grounds of your answer.*

C.'s widow is entitled to the estates on D.'s death.

As neither B., C., D., E., nor F. had any male issue the remainders over in favour of any such issue respectively never had any operation.

As neither B., C., D., E., nor F. took any more than life estates they had no power to dispose of any interest in the estates comprised in the original will of A. other than what interest they acquired (if any) in the ultimate remainder in favour of and as the right heir of A.

In the above case, as in point of fact, B., C. and D. have had their life interests respectively already, and as E. and F. have died before their life estates became interests in possession, and, as we have explained above, all the other remainders, except the ultimate remainder in favour of the right heirs of A., have failed to take effect, it follows that the sole question for determination is, Who is now the right heir of A.?

Assuming that there were no other persons capable, under any circumstances, of being the heirs of A. than the persons mentioned in the question, we have simply to apply the Rules of Descent to decide what is the right answer.

B. is dead and has left neither a will nor any issue behind him. C. is next entitled as heir of A., but he is also dead and has left a will but no issue. C.'s widow is universal devisee under C.'s will and she will take the estates in question, not in her own right, but in C.'s right, for on B.'s death intestate and unmarried the lands descended to C. as A.'s heir at law and passed under C.'s will.

3. *Certain real estate is devised to A. and B. to the use of C. for life, with remainders over. The will contains no power of sale. C. desires to take advantage of the Settled Land Act, 1882, with a view to a sale. What course must he adopt?*

He must give notice of his intention to exercise the power of sale conferred upon him by that Act to each of the trustees of the settlement by posting registered letters, containing the notice, addressed to the trustees severally, each at his usual or last known place of abode in the United Kingdom, and he must give like notice to the solicitor for the trustees, if any such solicitor is known to him, by posting a registered letter containing the notice, addressed to the solicitor at his place of business in the United

Kingdom, every such letter being posted not less than one month before the making by him of the sale.

Before, however, the power of sale is exercised and at the date of such notice the number of trustees must not be less than two, unless an express intention to the contrary is shown in the will, which would not probably be the case here. Any purchaser dealing in good faith with C. is not concerned to inquire respecting the giving of any such notice as is so required, but inasmuch as the purchase money must either be paid to not less than two trustees or into Court, at the option of C., the purchaser must see that there are such trustees or pay the money into Court, as the tenant for life cannot give the purchaser a legal discharge for the purchase money. In practice the trustees will either concur in the deed and therein acknowledge the receipt of the purchase money or sign a receipt indorsed on the deed so as to avoid the expense of paying the purchase money in and of taking it out of Court.

In this particular case before C. can exercise the power of sale he or one of the remaindermen must apply under sec. 38 of the Settled Land Act, 1882, by summons to the High Court, Chancery Division (unless a petition is directed to be presented by a judge), for A. and B. or two other fit persons to be appointed to be trustees of the will for the purposes of the Act, and the trustees to whom the above named notices are to be given are the trustees when appointed by the Court.

The power of sale under the Act can be exercised by C. from mere caprice if the formalities required by the Act are observed by him. (See 45 & 46 Vict. c. 38, ss. 3, 22, 38 and 45; *Wheelwright v. Walker*, 52 L. J. Ch. 274.) For other recent cases on the above Act, see *Byron's Charity*, 18 L. J. N. C. 48; *Re Walker*, 18 L. J. N. C. 76; *Re Jones*, 18 L. J. N. C. 79; *Re Wells*, 18 L. J. N. C. 80; *Re Muckensie's Trusts*, 18 L. J. N. C. 80; *Re The Duke of Newcastle's Settled Estates*, 18 L. J. N. C. 80 & 88; *Re The Duke of Rutland's Settlement*, 18 L. J. N. C. 99; *Re Earle*, 18 L. J. N. C. 96; *Re Morgan's Settled Estate*, 18 L. J. N. C. 100.

4. *In what respect does the law construe with greater strictness a special custom of descent in a particular manor than the custom of gavelkind or borough-English? Give an example.*

The rule is that particular customs of descent shall be taken strictly and shall not extend farther than the same are alleged and

proved. (*Payne v. Barker*, Sir O. Bridg. 18, 25, and cited in *Ryder v. Wood*, 1 K. & J. 644, 655.) Thus in the case of *Smart v. Smart* (L. R. 18 Ch. Div. 165) the custom of a manor was stated to be that all copyholds descended to the youngest son or daughter, brother or sister, uncle or aunt; but the custom (if any) was not further shown to be at variance with the common law. The youngest son of the youngest uncle claimed the copyholds as against the heir at common law, the late copyhold tenant having died intestate without leaving any son, daughter, brother, sister, uncle or aunt, but leaving sons of deceased uncles. The Court held that the youngest son of the youngest uncle was not entitled, but that the heir at common law was entitled to the copyholds. (Scriven on Copyhold by Archibald Brown, 63, 270.)

But as to the modes of descent in gavelkind and borough-English the law takes particular notice of them (Co. Litt. 175; 36 Hen. VI., 20, 21; Vide Stat., 17 ed., 2, st. 1, c. 16), and there is no occasion to prove that such customs actually exist, but only that the lands in question are subject thereto. But with respect to most customs, not only must their existence be shown, but also that the thing in dispute is within the custom alleged. (1 Steph. Com. 63.)

5. *The owner in fee of an estate, partly freehold and partly copyhold, conveys the freehold, and covenants to surrender the copyhold by way of voluntary settlement. He dies without having surrendered the copyhold. Can the performance of the trusts be enforced by the objects of them, and to what extent?*

Assuming that the rights of purchasers for value under 27 Eliz. c. 4, and of creditors under 13 Eliz. c. 5, and the Bankruptcy Act, 1869, s. 91, and the Bills of Sale Acts of 1878 and 1882, and assuming there is no fraud in this case upon which the voluntary settlement can be set aside, then there remains only the validity of the settlement as between the parties and their representatives to consider.

As between the parties thereto the above settlement is binding, but as it was not made for a valuable consideration, it is clear from the authorities that no Court can decree specific performance of the covenant to surrender the copyhold against the customary heir or the devisee of A., for to do so would be violating the rule that

"Equity will not aid a volunteer." That maxim or rule means in modern days that the Court in administering its equitable jurisdiction will not aid a volunteer by giving him any special equitable relief as, for instance, by decreeing specific performance, and that he cannot claim damages for breach of such a covenant because he has sustained none.

As regards the freeholds, inasmuch as the settlement is as to them complete in itself, and, therefore, the objects do not require any assistance from the Court, the objects can bring an action to recover the lands against the heir or devisee of A., or any person other than themselves, their tenants and agents, and rely upon the voluntary settlement in support thereof. (See *Ellison v. Ellison*, 6 Ves. Rep. 656; 1 Wh. & Tud. L. C. Eq. 273; Haynes Student's L. C. 319.)

6. *In testamentary gifts to a class, at what period is the class to be ascertained (1) when the gift is in reversion; (2) when the gift is in possession; and who, in each case, are included in the class?*

(1.) *a.* When there is a preceding life or other interest, the distribution of the capital fund is suspended, and the class entitled will be the children, &c., living at the death of the testator, and also those born *afterwards*, but before the determination of such prior interest. (*Middleton v. Messenger*, 5 Ves. 136; *Walker v. Shore*, 15 Ves. 122; *Re Partington*, 3 Giff. 378; *Browne v. Hammond*, Johns. 212.) And where the limitation or gift is to children or legal issue of a person, his children, if living, will take to the exclusion of their issue. (*Holland v. Wood*, L. R. 11 Eq. 91.) The interests will vest in each member of the class as he comes into existence, although he may die before the period of distribution. (*Att.-Gen. v. Crispin*, 1 B. C. C. 386; *Middleton v. Messenger*, 5 Ves. 136.)

(1.) *b.* When the period of distribution is postponed until the members of the class, for instance, children, attain a certain age, as twenty-one, whether there is or not a life or other prior estate or interest, the rule is to let in all the children until there must be a distributive share given to one. If, therefore, at the death of the testator, when the gift is immediate, or of the tenant for life, any child has attained twenty-one, the class is then ascertained; if no

child has then attained that age, it is ascertained as soon as any child does attain that age and cannot be further enlarged, though it may be reduced by the death of some under twenty-one. (*Andrews v. Purtington*, 3 B. C. C. 401; *Barrington v. Tridram*, 6 Ves. 345; *Whitbread v. St. John*, 10 Ves. 152; *Clarke v. Clarke*, 8 Sim. 59; *Oppenheim v. Henry*, 10 Ha. 441; *Gillman v. Daunt*, 3 K. & J. 48; *Bateman v. Gray*, 29 Beav. 447; see *Eddowes v. Eddowes*, 30 Beav. 603; *Locke v. Lamb*, L. R. 4 Eq. 372.)

But if in such cases the testator merely declares that the interests are to be vested at twenty-one, the class is ascertained at his death (or that of the tenant for life if there be one), and cannot be enlarged though no child has then attained twenty-one. (*Berkeley v. Swinburne*, 16 Sim. 275; see *Davidson v. Dallas*, 14 Ves. 576.) In general it makes no difference as to the application of the rule that there is a clause of accruer. (*Balm v. Balm*, 3 Sim. 492.) But otherwise where there are clauses for advancement and maintenance for the children whether they "shall or not" have attained twenty-one. (*Iredell v. Iredell*, 25 Beav. 485.)

(1.) *c.* And if the bequest is to all the children of a person "now born or hereafter to be born who shall attain twenty-one," with powers of advancement out of vested or presumptive shares, all the children who live to attain that age will be entitled. (*Bateman v. Gray*, L. R. 6 Eq. 215.)

If under the preceding rules the gift to a class may be too remote, as to A. for life, remainder to his children at twenty-five, there would seem to be a tendency to hold the time of ascertaining the class to be at the death of the tenant for life. (See *Kevern v. Williams*, 5 Sim. 171; *Elliot v. Elliot*, 12 Sim. 276; Cons. the observations, 2 Jarm. 150; and *Maintenance v. Beevor*, 8 Ha. 48.)

(2.) When there is no reference by the testator himself to any particular time at which the class is to be ascertained, and the gift is immediate to the children of the testator or any other person, that is a gift not subject to any prior life interest, or the attainment of any particular age, or any other contingency, such children or other members of the class, and such only, as are living at the testator's death, will be entitled. (*Garband v. Mayot*, 2 Ver. 105; *Heathe v. Heathe*, 2 Atk. 121.) The rule that children living at the death, and those only, are entitled, applies even where the gift

is to all the children. (*Scot v. Harwood*, 5 Madd. 332.) And a gift to survivors in certain events, *e.g.*, on the death of any under twenty-one, means survivors of the class entitled, viz., those living at the testator's death. (*Davidson v. Dallas*, 14 Ves. 576 ; see *Berkeley v. Swinburne*, 16 Sim. 275.) A gift is considered immediate within this rule, notwithstanding the property is charged with the payment of debts and annuities (*Singleton v. Gilbert*, 1 Cox, 68 ; *Hill v. Chapman*, 3 B. C. C. 391), or is reversionary. (*Hugger v. Payne*, 23 Beav. 474.) The rule applies in cases of gifts to other classes of relations, for instance, nephews and nieces. (*Viner v. Francis*, 2 B. C. C. 658 ; *Shuttleworth v. Greaves*, 4 M. & C. 35 ; *Baldwin v. Rogers*, 3 D. M. & G. 649, 656 ; *Watson's Compendium of Equity*, vol. ii., p. 1284—1286.)

*7. What was the interpretation of the words "die without issue" prior to the Wills Act, and what change did that Act effect ?*

Prior to the 1 Vict. c. 26, where there was no reference or gift to sons, children, &c., a devise or bequest to a person, with a gift over in the event of his dying *without issue* (*Sparrow v. Shaw*, 3 B. P. C. 120), or *without having issue* (*Cole v. Coble*, 13 C. B. 445), was held, in the absence of controlling words, indicating a contrary intention, to refer to an indefinite failure of issue *at any time*, and not at the death of such person, whether the words were contained in a devise of real, or bequest of personal estate, and under such words the devisee took an estate tail in realty, and the legatee took an absolute interest in personalty. *There was an exception* to the general rule, where the testator referred to *his own issue*. This was held to mean issue living *at his death*, in default of such issue the gift over took effect. (*French v. Cuddell*, 3 B. P. C. 257 ; *Bagot v. Legge*, 10 Jur. N. S. 994 ; and see *Bryden v. Willett*, L. R. 7 Eq. 472.)

Now, owing to the provisions of 1 Vict. c. 26, in any devise or bequest of real or personal estate, the words "die without issue," or "die without leaving issue," or "having no issue," or any other words which may import either a want or failure of issue, of any person in his lifetime or at his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death



of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail or of a preceding gift, being without any implication arising from such words, a limitation of an estate tail to such person or issue or otherwise. The Act is not to extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age, or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue. (Sect. 29.)

This section has no application to cases in which the words "dying without issue" are coupled with other words, such as "dying under twenty-one," which additional words modify their meaning. (*Morris v. Morris*, 17 Beav. 198.) Thus, under a devise to A. in fee, if he should die without issue *or* (which was read *and*) under twenty-one, over, it was held that A. on attaining twenty-one became absolutely entitled. The cases previously cited, in which the words "die without issue," &c., were used in the restricted sense, and not in the sense of an indefinite failure of issue, would still be authorities. In *Greenway v. Greenway* (2 D. F. & J. 128), the testator by will, since the 1 Vict. c. 26, gave his real and personal estate in trust as to the income for A. and B., *or* the heirs of their bodies, and if either should die *leaving* heirs of his body his share should descend to such heirs, if both should die without issue to the testator's nearest of kin, it was held that "*or*" should be read "*and*," and that A. and B. took the real estate as tenants in common in tail, with cross-remainders in tail, and that as to the personal estate it was effectually given over to the next-of kin in the event of A. and B. dying without issue living at their respective deaths. (Watson's Compendium of Equity, vol. ii., pp. 1301 and 1304—5.)

8. *What is the meaning of "domicile" and what are the three different kinds of domicile? How is the domicile of the following persons governed:—Wife, divorced woman, wife of a convict, minor, married, and unmarried British subject resident abroad?*

By domicile we mean home, the permanent home. (Lord Cranworth in *Wickes v. Hume*, 4 Jur. N. S. 938.) It is defined in

Justinian thus:—"in eodem loco singulos habere domicilium non ambigitur ubi quis larem rerumque ac fortunarum suarum summam constituit; unde rursus non sit discessurus si nihil avocet unde cum profectus est peregrinari videtur."

The definition is quoted by Lord Wensleydale with approbation as "habitation in a place with the intention of remaining there for ever, unless some circumstance should occur to alter that intention." (*Wicker v. Hume*, *supra*.) That place is properly the domicile of a person in which he has voluntarily fixed the habitation of himself and family, not for a mere special and temporary purpose, but with a present intention of making it his permanent home, unless and until something (which is unexpected or uncertain) shall occur to induce him to adopt some other permanent home. (*Lord v. Colvin*, 28 L. J. Ch. 361.)

The question of domicile *primâ facie* is much more a question of fact than of law. (*Bempole v. Johnstone*, 3 Ves. 201.)

Domicile is of three kinds:—

1. Domicile of origin.
2. Domicile by law.
3. Domicile by choice.

Wife.—The husband's actual and the wife's legal domicile are *primâ facie* one, wherever the wife may be personally resident. (*Chichester v. Donegal*, 1 Add. 19.) By marriage, the domicile of the husband becomes that of the wife. (*Dalhousie v. M'Donall*, 7 Cl. & Fin. 817; *Harvey v. Furnie*, 52 L. J. (H. L.) P. D. & Ad. 33.) The domicile of the husband is that of the wife, she cannot acquire a separate domicile for herself, though the husband may have been guilty of such misconduct as would furnish her with a defence to a suit by him for restitution of conjugal rights. (*Felverton v. Felverton*, 29 L. J. P. M. & A. 34; *Whitcombe v. Whitcombe*, 2 Curt. 351.) And this continues so, though the wife resides in Paris leaving her husband at home in England for years, or where the parties are living apart under a deed of separation. (*In re Daly*, 27 L. J. Ch. 751; *Warrender v. Warrender*, 2 Cl. & Fin. 488.)

Divorced woman.—She retains her former husband's domicile until she has acquired a different one herself. (See *Williams v. Dormer*, 2 Robert, 505.)

Wife of a convict.—Her domicile is that of her husband before his conviction, until she acquires a different domicile.

Minor if married.—Her domicile becomes that of her husband as above stated.

Minor if unmarried.—His or her domicile is that of his or her father, and he or she is unable during pupillage, or until *sui juris* to acquire another. (*Somerville v. Somerville*, 5 Ves. 786; *In the goods of Patten*, 6 Jur. N. S. 151, Prob.) And if the father die, a domicile acquired by the surviving mother becomes the domicile of the infant or minor. (*Pottinger v. Wightman*, 3 Meri, 67.)

British subject resident abroad.—This, of course, depends upon the circumstances. If he is resident abroad permanently, and by the law of the place of his home he becomes domiciled, he ceases to have any domicile here. By the common law, a person born in a friendly foreign country, where his father is in the military service of the British Crown, is not a British subject. The *status* of a British subject is not extended by statute beyond grandchildren of the last ancestor born in British territory. (*De Geer v. Stone*, 52 L. J. Ch. D. 57; 7 Anne, c. 5; 4 Geo. II. c. 21; 13 Geo. III. c. 21; Browne's Divorce Law and Practice, 5, 8; A. V. Dicey on the Law of Domicile, 6, 7, 29, 331—341.)

9. *A fund is settled upon trust for A. for life, and after his death upon trust for his children as he shall appoint, and in default of appointment among the children equally, to vest in them at the age of twenty-one. The settlement contains the usual hotchpot clause. A. has four children, one of whom having attained twenty-one, dies in his lifetime a widower, and intestate, leaving several orphan children. A. is desirous of exercising his power of appointment, but wishes to provide for his grandchildren out of the fund. Can he do so in any and what way?*

Yes, A. can provide for his grandchildren (the children of his deceased son) for, subject to any appointment A. may make, his grandchildren have acquired a vested interest in their parent's share of the fund which is unappointed by A., as the next of kin of their father. Their father's share in the unappointed fund vested on his attaining twenty-one. It follows, therefore, that if A. does not appoint the whole fund amongst his three surviving children who attain twenty-one, his grandchildren, though infants, must take their deceased father's share between them. What the value of the

share is will depend upon what appointment A. may make amongst his three surviving children who attain twenty-one. A. himself cannot, however, appoint to his grandchildren directly, as the power is to appoint amongst his children.

One way A. might achieve his object, assuming he wished to give his grandchildren one fourth of the fund, would be not to exercise the power of appointment at all. In that case his three surviving children, if and when they attain twenty-one, will take three fourths between them equally, and his grandchildren will take the remaining fourth part between them equally, not in their own right, but as representing and standing in the shoes of their deceased father.

The same end may be gained by A. releasing his right to appoint by deed. This will be the better plan, if A. wishes to give his grandchildren one fourth part between them in a manner that will be binding upon him and his representatives, and will enable his grandchildren, if necessity ever requires it, to sell or mortgage their interest to better advantage than if the former method is adopted. (See the Conveyancing and Law of Property Act, 1881, s. 52, and Conveyancing Act, 1882, s. 6.)

Another mode will be for A. to appoint one fourth part of the fund to each of his three surviving children who attain twenty-one, and to leave the remaining fourth part unappointed. In that case, the unappointed share would devolve upon the grandchildren, and the three surviving children who attain twenty-one, but for the hotchpot clause, which prevents the three surviving children from taking any part of the unappointed share, unless they bring their share into account. If they are willing to so account, they will thereby gain no more than what is appointed to them and the grandchildren as the next-of-kin of their deceased father will take a fourth part of the whole fund equally between them. If they refuse to account, then owing to the hotchpot clause the remaining fourth part unappointed will devolve upon the grandchildren equally.

If A. wishes to give the grandchildren less than one fourth part of the whole fund, he must, therefore, appoint the residue amongst the three surviving children. A. cannot give more than one fourth part of the whole to his grandchildren, unless he waits until one of the three surviving children attains twenty-one. He could then appoint all the fund to such one after he has attained twenty-one,

and then get that one to execute an assignment in such a way as to carry out his wishes with respect to the whole fund, or such part as he does not mean that one to retain.

10. *A testator devises land to A., charged with the payment of debts and legacies in aid of his personalty, and appoints B. and C. his executors. Can A. alone make a title to the land? Give the reasons for your answer.*

This is a question upon which those competent to give an opinion of value have differed, one saying that A. alone can by virtue of 22 & 23 Vict. c. 35, ss. 14 to 18, make a valid title to the land, because he is to be deemed a trustee for the purpose of raising the money for the payment of the debts (see Williams's Real Property, 14th ed., 234—5); whilst another says that A. cannot make a title to the land alone, because the above-named Act does not apply to the case of a beneficial devisee whose interest under the will is charged with the payment of debts and legacies, or debts alone.

Owing, however, to the rule laid down in the recent case of *Tanqueray-Willaume to Landau* (51 L. J. Ch. 434; L. R. 20 Ch. D. 465), that debts are to be deemed as regards a purchaser to be satisfied as soon as a period of twenty years has elapsed from the testator's death, it would seem logically to follow that A. could, if that period of twenty years has elapsed, now make a title to the land, and no purchaser could object to complete in the absence of fraud or notice of any existing unpaid debts or legacies because of such charge, because the charge is impliedly at an end, and A. would be selling as beneficial owner, and as if there never had been any charge. It is true, in the case of *Tanqueray-Willaume to Landau* (*supra*) there was not a charge of debts and legacies, but this would seem to follow *à fortiori*, inasmuch as by 37 & 38 Vict. c. 57, legacies are statute barred after twelve years. (See also *Storry v. Walsh*, 18 Beav. 559.)

As regards the old decisions upon which we are thrown back, if 22 & 23 Vict. c. 35, does not help us, we have, on the one hand, those holding that A. having the legal estate with the above-named charge can alone make a title to the land; and, on the other hand, those holding that the executors have in equity an implied power to sell the land by reason of the charge for the payment of debts and

legacies (it being the duty of executors to see these paid), and that the executors alone can give a valid receipt for the purchase-money ; but that they do not take by implication a legal power to sell, and cannot therefore convey the legal estate, it being necessary to complete the purchaser's title that A. shall concur in the conveyance. (See *Hodkinson v. Quinn*, 1 J. & H. 303, 309 ; H. A. Smith's Equity, 299—304.)

We should therefore advise that A. cannot make a title alone if the testator died within twenty years of the sale, but B. and C. and the legatees must join in the conveyance, and that A. can make a title alone if the testator died more than twenty years before the sale took place. For a case where land was devised charged with the payment of debts, and the devisee was also one of the executors, see *Corser v. Cartwright*, 45 L. J. Ch. 605 ; L. R. 7 E. & I. App. 731 ; *Watkins v. Cheek*, 2 Sim. & S. 199 ; *Colyer v. Finch*, L. R. 5 H. L. Cas. 905 ; s.c. 26 L. J. Ch. 65.

---

## 2. THE PRINCIPLES OF LAW AND PROCEDURE IN MATTERS USUALLY DETERMINED OR ADMINISTERED IN THE CHANCERY DIVISION OF THE HIGH COURT OF JUSTICE.

### 11. *Explain and illustrate the meaning of "satisfaction."*

*A testator bequeaths a legacy to A., a stranger, and the residue to trustees upon trust for testator's daughters, B. and C., for their lives, with remainder to their children respectively, and remainders over, and he subsequently makes advances in unequal amounts to A., B., and C. Are any of the interests adeemed ?*

Satisfaction arises where a donation is made with the express or implied intention on the part of the donor that the gift shall be deemed a satisfaction *pro tanto* or *in toto* of some claim which the donee has already upon the donor. Thus, suppose a father to have made a will giving one of his daughters £5000 in Consols, and subsequently he assigns to the trustees of that daughter's marriage settlement £10,000 in Consols, and then dies without having revoked his will. In that case the £10,000 in Consols will, in the absence of any sufficient reason to the contrary, be deemed to be a satisfaction

of the £5000 in Consols bequeathed by the will ; or, in other words, the £5000 in Consols will be adeemed or taken away by the benefit subsequently conferred by the settlement.

In the case contained in the question, the interests of A. will not be adeemed because he is a stranger ; but the interests of B. and C., under the will will be adeemed, either *pro tanto* or *in toto*, according to the respective values of the subsequent advances and the benefits conferred by the will. (See *Talbot v. Duke of Shrewsbury*, 2 Wh. & Tud. L. C. Eq. 352 ; *Chancery's Case*, 2 Wh. & Tud. L. C. Eq. 353 ; *Ex parte Pye*, 2 Wh. & Tud. L. C. Eq. 338 ; Haynes's Student's L. C. 278—283 ; H. A. Smith's Principles of Equity, 445, *et seq.*)

12. *Will specific performance be decreed in cases where the vendor has only a partial interest in the subject-matter which he contracts to sell absolutely ?*

*An estate is limited to such uses as A. and his wife shall appoint, and, in default of appointment, to the wife for life with remainder to A. in fee. A. contracts to sell the estate to B. by a contract reciting these limitations, but providing for a conveyance by all proper parties, and B. pays the purchase-money to the trustees. The wife subsequently refuses to concur. To what decree is B. entitled ?*

Where the want of title is only partial—i.e., where it affects only part of the estate or only part of that interest in it which was agreed to be sold—the question arises whether the vendor can resist the purchaser's claim to specific performance with a compensation, or, to speak more accurately, an abatement of the purchase-money. This right generally but not universally exists in each class of cases. Thus, want of title to the entire interest contracted for will not, it seems, be available as a defence for the vendor if the purchaser elects to take such estate as the vendor can convey ; or to dispense with the concurrence of a person having a partial interest in the property, as, *e.g.*, a wife entitled to dower, upon being allowed an abatement from his purchase-money. (*Wilson v. Williams*, 3 Jur. N. S. 810.) So the want of title to even a considerable part of the estate is not necessarily a reason why the vendor should not convey the residue. (*Western v. Russell*, 3 Ves.

& B. 187, 192; and see *Hooper v. Smart*, *Bailey v. Piper*, L. R. 18 Eq. 683.) But cases might occur where, on the ground of hardship, equity would refuse to assist a purchaser (as *Wheatley v. Slade*, 4 Sim. 126, which, however, Lord St. Leonards did not approve of: Sug. 318). The result of the authorities appears to be that, except where there is a good defence on the ground of hardship or the like, the Court will insist on a vendor making good his contract to the extent which he is able to make it good, and on his submitting to a proportionate reduction of the purchase-money if the purchaser is willing to complete on these terms; and that, in applying this rule, no distinction will be drawn between cases where a vendor has contracted to sell an entire estate when he has only part of it; and cases where he has contracted to sell undivided shares in the estate and has not so many shares as he contracted to sell.

The right, however, of a purchaser to require specific performance with an abatement of the purchase-money is subject to the vendor's right to rescind the contract where such a right is reserved by the conditions. Thus, it has been held that a condition for rescinding the contract, if counsel should be of opinion that a marketable title could not be made, enabled the vendor to rescind upon counsel rejecting the title to one undivided third of the property. (*Williams v. Edwards*, 2 Sim. 78; and see *Mawson v. Fletcher*, L. R. 6 Ch. App. 91.) Of course, no such question can be raised by a vendor when upon the purchase of several lots by the same purchaser the title to one or more of such lots is found to be defective.

As a general but not universal rule, every purchaser has a right to take what he can get, with compensation for what he cannot get; but he cannot claim a conveyance of an interest to which a vendor shows a doubtful or defective title with an abatement in respect of the imperfection in title, except perhaps where the defect is of a temporary character, or is otherwise a fit subject for compensation.

So, in general, when the vendor's *interest* is less than what he professes to sell, the purchaser may take what he can have with an abatement.

And matters which would not be considered fit subjects for compensation as against a purchaser, may entitle him to an abate-



ment of purchase-money if he elect to take; *e.g.*, the existence of mining rights, or rights of common over the estate, or the want of a road which the vendor had agreed but was unable to make.

If, however, the purchaser at the time of entering into the contract be aware of the existence of the outstanding interest, or that the vendor is agreeing for more than he can give, or if he proceed in the matter with notice of the defect and without insisting on it, no abatement of purchase-money will, it is conceived, be allowed, and the omission of the purchaser to make proper enquiries before accepting the title may preclude him from claiming compensation for a defect which, with a little more diligence, he might have discovered, as the existence of an undisclosed lease, and provided the purchaser was informed of the premises being in the occupation of a tenant.

It may occasionally happen that the vendor's interest is found to exceed that which he contracted to sell: in which case he must as a general rule make good the latter to the best of his ability. (*Twining v. Morice*, 2 Bro. C. C. 331.)

If the purchaser be unwilling to complete with an abatement, he may resist specific performance, on the ground of the tenure of the property, or of a material part of it, varying from that to which he is entitled under the contract; *e.g.*, he will not be compelled to take a term (even for 4000 years), or a copyhold for a freehold, or mere sheepwalks for a freehold. (Dart's Vendors and Purchasers, 5th ed., vol. ii., 1065, 1067, 1068, 1070—1, 1072—3.)

In the case mentioned in the question, which is similar to *Barker v. Cox* (46 L. J. Ch. 62; L. R. 4 Ch. D. 464), the purchaser is entitled to a conveyance of the remainder in fee, with compensation for the wife's life interest.

13. *A testator devised real estate to trustees upon trust to sell and convert and hold proceeds in trust for A., and B., a married woman, as tenants in common, with remainder to the survivor in case either died without issue, and remainder to testator's next of kin. The estate was, at the request of the parties, not sold, and A. and B. and her husband executed a deed acknowledged by B. releasing the trustees without prejudice to their right to require a conveyance, and received the rents for some years subsequently. A. died, leaving issue. How will the estate devolve?*

This question illustrates the doctrine of Reconversion, which is defined by Snell (5th ed., 203) as that notional or imaginary process by which a prior notional conversion is annulled and taken away, and the notionally converted property is restored in contemplation of the law to its original actual unconverted quality.

It has to be decided here whether or not A. and B., by acting as they did, have in effect caused the conversion effected by the testator's will to be annulled. That they have not is clear from the authority of *Sisson v. Giles* (32 L. J. Ch. 606), where the facts were identical with this case. It was there decided that the property is to be deemed to be personal property for all purposes, and hence the legatee or personal representative of A. will take one moiety and B. will take the other moiety absolutely, subject to the limitation over contained in the will taking effect in favour of the testator's next of kin should B. die without issue. (See also *Re Cooper's Trusts*, 23 L. J. Ch. 25; *Re Newbury's Trusts*, 46 L. J. Ch. 612; L. R. 5 Ch. D. 746; *Curteis v. Wormald*, L. R. 10 Ch. D. 173; *Singleton v. Tomlinson* (H. L. Ir.) L. R. 3 App. Cas. 404; *Re Gordon's Estate*, *Roberts v. Gordon*, 46 L. J. Ch. 794; L. R. 6 Ch. D. 531; *Mutlow v. Bigg*, 45 L. J. Ch. 282; L. R. 1 Ch. D. 385; *Meek v. Devenish*, 47 L. J. Ch. 57; L. R. 6 Ch. D. 566; *Re Davidson*, *Martin v. Trimmer*, *Davidson v. Trimmer*, L. R. 11 Ch. D. 341; Law Examination Journal, No. 55, p. 362). On the death of the married woman, leaving issue, her personal representative will take—i.e., her husband, both as her administrator and beneficially—as the Married Women's Property Act, 1882, has not altered the law in this respect.

14. *A. and his wife assigned certain property belonging to A., and a reversionary interest belonging to the wife for her separate use to a Bank upon trust to receive the property and reversionary interest, and after payment of certain expenses, to retain the amount then due on the husband's account, and to pay any surplus to A. and his wife, according to their respective rights, but the deed contained no proviso for redemption or power of sale. Can the bank maintain an action for foreclosure against A. or his wife?*

As regards the wife's property, there can be no foreclosure decree made, and no sale can be made, because upon the construction of

the security it appears that the reversionary interest is to be dealt with when it becomes payable, for the wife is in the position of a surety for her husband, and against her interest the Bank can have no claim beyond what the trusts of the deed of assignment prescribe, viz., to retain out of the reversionary interest, *when it fell in*, the moneys secured. (*Stamford, Spalding and Boston Banking Co. v. Bull*, 31 L. J. Ch. 143; 4 De G. F. & J. 310; Fisher on Mortgages, 506.)

As regards the husband, he cannot claim foreclosure, because there is no condition upon the breach of which a foreclosure can arise. (*Sampson v. Pattison*, 1 Hare, 533; *Watson v. Waltham*, 2 Ad. & E. 485.) The only remedy of the husband and wife is to redeem. The only remedy of the Bank is to apply to the High Court (Chancery Division) for a sale. (*Locking v. Parker*, 42 L. J. Ch. 257; L. R. 8 Chanc. 30.)

15. (1.) *A settlement is obtained by the undue influence of A. whereby property is conveyed to A. for life, with remainder to A.'s wife and children.*

(2.) *A debtor induces a lady to whom he is engaged to be married to become surety for a loan. The creditor was aware of the relationship, and the lady subsequently insisted she had been imposed upon by A.*

*Explain briefly the rules applicable in suits to set aside, (1) the settlement as against A.'s wife and children, (2) the security as against the creditor.*

(1.) The exact circumstances under which this settlement was executed are not related, and therefore it is impossible to do better than give a brief statement of the law applicable to a settlement obtained by undue influence. It need hardly be said that relief is given in such a case as this by the Court in the exercise of its equitable jurisdiction on the ground of fraud, which in certain inequitable transactions is presumed from the circumstances or relation of the parties. This case comes within that class of inequitable and unconscientious transactions in which the chief or it may be the sole element of fraud consists in the peculiar circumstances or relations of the parties concerned.

If the circumstances of this case were known it might appear

that the settlement was made upon A. and his wife and children in consideration of some supposed benefit which A. is to confer upon the settlor. If so, there would be an imperfect contract between A. and the settlor, which is wanting the very foundation of a binding contract, viz., the consent or agreement of the parties. There can be no true consent or agreement without a capacity to understand the terms of the agreement and also freedom to accept or to refuse the terms proposed. If, then, a person induces another who lacks either this capacity or this freedom to enter into an apparent contract, however it may be fenced by formal observances, the Court in administering Equity will not recognise the transaction; but deeming it fraudulent will generally grant relief against it at the suit of the party imposed upon.

Again, if the circumstances of this case were known, it might appear that this settlement was made as an apparent gift by the settlor to A., and if so, its being induced by undue influence on A.'s part would render it void. The undue influence may be presumed from the very relations between the settlor and A. Instances of such a relationship between two persons are:—Guardian and ward, parent and child, trustee and *cestui que trust*, legal adviser and client, medical adviser and patient, religious advisers, &c.

Or it may be that the facts of this case are identical with the well-known leading case of *Huguenin v. Baseley* (14 Ves. 273; 2 Wh. & Tud. L. C. 547; Haynes's Student's L. C. 321), where there was a voluntary settlement made by a widow upon the defendant, who was a clergyman, and who had been appointed by her as agent to manage her affairs. On her subsequently marrying again, a bill was filed on behalf of herself and her husband, praying that the settlement might be set aside, and this relief was granted on the ground that the defendant had exercised undue influence and abused the confidence reposed in him.

Whether the transaction in this case partakes of the nature of an apparent contract or of an apparent gift, it will be set aside, if from the relationship between the parties and if in accordance with the authorities, it is one as to which relief can be granted on the ground of undue influence.

No formal definition can be drawn as to what amounts to undue influence. It is decided by the Court in its discretion on the circumstances of each particular case. But there are certain

circumstances frequently found in cases of this class which weigh heavily with the Court in the exercise of this discretion, and which serve well to illustrate the mode of reasoning on which relief is granted. Thus the absence of any disinterested or professional advice on the side of the plaintiff, especially where there is a confidential relation between the parties, or considerable disparity between their powers of judgment and means of knowledge gives rise to a strong suspicion of fraud. (*Rhodes v. Bate*, 1 Ch. 252; *Dent v. Bennett*, 4 My. & Cr. 269, 273.) So also a fictitious statement of consideration is a material indication of an undue advantage having been taken. (*Hawes v. Wyatt*, 3 Bro. C. C. 156; *Sharp v. Leach*, 31 Beav. 491.) The mere improvidence of the transaction (*Harvey v. Mount*, 8 Beav. 439), is of influence in the same direction. But such circumstances as these will not, in the absence of some such relation of confidence as those above enumerated, always dispense with the necessity of the plaintiffs explicitly proving the fact of undue influence. (*Hunter v. Atkins*, 3 My. & K. 113; *Toker v. Toker*, 31 Beav. 629.) It at least requires a strong case where no such relation exists to throw upon the donee the burden of proving the innocence of the transaction. (*Beanland v. Bradley*, 2 Sm. & G. 339; *Haghton v. Haghton*, 15 Beav. 278, 299; H. A. Smith's Equity, 149, 154, 155, 157, 158.)

(2.) We assume A. was the intended husband in this case. The above principles will equally apply here, except that the creditor being in the position of a quasi-purchaser, it will require a stronger case on the part of the lady to set the transaction in question aside so far as she is concerned; and if the lady is a woman with a strong will and sound judgment, and pretty well acquainted with business matters, it would be impossible to set it aside in the absence of actual fraud. (*Page v. Horne*, 11 Beav. 227; *Corbett v. Brock*, 20 Beav. 524; H. A. Smith's Equity, 157.)

**16. State shortly the rule as to rectification of mistakes in marriage settlements.**

*When there is a variance between the marriage articles and the settlement itself, how will it be dealt with?*

Where by mistake an instrument *inter vivos* is not what the parties intended, or there is a mistake in it other than a mistake in law, or any acts necessary to give validity to the instrument have been omitted, and the mistake is clearly made out by admissible and satisfactory evidence, or is admitted by a defence to a statement of claim, or is evident from the nature of the case, or from the rest of the deed, equity will rectify the mistake. (Story, ss. 152, 157, 159, 166, 168; and see Sugd. V. and P., ch. 3, s. 11, pl. 2nd ed., 10; *Lord Glenorchy v. Bosville*, and *Legg v. Goldwire*, 1 Wh. & Tud. Lead. Cas. Eq., 1 & 17.) Except as against a *bond fide* purchaser for valuable consideration without notice (Story, s. 165, 2 Spence, 195), or other person having an equity equal to that of the plaintiff (Story, s. 176), such as the issue in tail, or a remainderman-in-tail, where there is no equity to affect the conscience of such issue or remainderman (Story, s. 178). But in order to enable the Court to rectify an antenuptial settlement by striking out a part, it must be proved that it contains something which has been inserted by mistake contrary to the intention of all the parties. (*Rooke v. Lord Kensington*, 2 K. & J. 753, 764; *Sells v. Sells*, 1 Drew & Smale, 42; *Thompson v. Whitmore*, 1 Johns. & Hem. 268; *Elwes v. Elwes*, 2 Gif. 545.) And where an instrument is substantially what the parties intended, although so framed under a mistaken view of the law, the Court will not rectify the mistake.

A husband cannot sustain a suit to have a settlement rectified where he executed it with a knowledge of its contents, though he gave notice before the marriage that he should apply to the Court to have it rectified. (*Eaton v. Bennett*, 34 Beav. 196; *Sin. Man. Eq.*, 12th ed., 53 *et seq.*)

Where there are articles and a settlement before marriage, as a general rule the settlement alone can be looked to; if it is different from the articles, it must be taken as a new agreement. But if it purports to be executed in pursuance of the articles, or if there is clear and satisfactory evidence showing that the discrepancy has arisen from a mistake, the Court will reform the settlement, and make it conformable to the real intention of the parties. (2 Spence's Eq. Jur. 140; *Bold v. Hutchinson*, 5 D. M. & G. 558, 568.) If the articles are before marriage and the settlement after marriage, the articles are in effect the binding instrument; and if the settlement gives estates or interests different from

those which the Court would give on the construction of the articles, the settlement will be reformed, as between parties and representatives and mere volunteers, but not as against a purchaser for valuable consideration without notice. (2 Spence's Eq. Jur. 140, 141; Peachy on Settl. 132; Sm. Man. Eq., 12th ed., 57.)

17. "*Marshalling will not be enforced to the prejudice of third parties.*" Explain what is meant by this, and illustrate by an example.

*Has a surety any right to marshal?*

The question involves the doctrine of marshalling of securities. The general principle may be thus stated, with some slight adaptation, in the words of Lord Hardwicke in *Lanoy v. Duke of Athole* (2 Atk. 446), viz.:—If a person having two real estates mortgages both estates to A., and afterwards mortgages one only of the estates to B., whether or not B. had notice of A.'s mortgage (*Tidd v. Lister*, 10 Hare, 157), the Court directs A. (but always without prejudice to A.) to realise his debt out of that estate which is not in mortgage to B., so as to leave the one estate which is in mortgage to B. to satisfy B. so far as it goes. The general principle of marshalling is applicable also as against a surety to whom (on payment by him of the debt) A. may have assigned his two securities. (*South v. Bloxum*, 2 Hem. & Mill. 457; *Robinson v. Gee*, 1 Ves. Sr. 252.) The principle is subject to the following restriction, viz., that the marshalling of securities is not enforceable by B. to the prejudice of C., a third person. (*Bradley v. Riches*, 47 L. J. Ch. 811; L. R. 9 Ch. D. 189; *Averall v. Wade*, L. & G. t. Sugd. 252; *Burnes v. Racster*, 1 Yo. & Col. Ch. Ca. 401; *Thorncycroft v. Crockett*, 2 H. L. Cas. 239; Snell's Equity, 5th ed., 287.)

An example of the application of the rule that securities of the creditors of living persons will not be marshalled to the prejudice of third parties is as follows:—If there is first a mortgage of A. and B., and then a mortgage of B. only, and then another mortgage of A. and B. to a third mortgagee without notice of the second mortgage, the securities will not be marshalled against the last mortgagee. (*Burnes v. Racster*, *supra*.) Secus if he had notice at the time of his advance. (*Re Mower's Trust*, L. R. 8 Eq. 110; H. A. Smith's Equity, 515.)

The above general rules regarding the marshalling of securities

are applicable as against sureties also. (Snell's Equity, 5th ed., 493.) Thus in *Kinnaird v. Webster* (48 L. J. Ch. 348; L. R. 10 Ch. D. 139), C. obtained an advance of £2000 from his bankers, and gave them ten promissory notes for the amount, a surety undertaking in the event of the notes not being paid at the due dates to secure the amount due. When the first two notes fell due there was a balance in C.'s favour to meet them. When the other notes fell due C.'s account was overdrawn, but he made subsequent payments which, if he had not been afterwards allowed to overdraw, would have met all the notes. The bankers debited the first five notes to C.'s general account, but kept the last five notes out of the general account. On an action by the bankers to enforce the security against the surety, it was held that the subsequent payments by C. must be considered to have been appropriated to the discharge of the amount due on the notes, and that the surety was discharged.

18. *A creditor of an insolvent testator recovered judgment for his debt against his executor prior to an order for administration of the estate. Is he entitled to any priority over other creditors of the testator?*

Yes, he is entitled to priority over the simple and specialty contract creditors against the estate only, and against those who have not obtained judgment against the executor. This was so before the Judicature Acts were passed, and sect. 10 of the Judicature Act of 1875 has not affected it. (*Re Maggi, Winehouse v. Winehouse*, 51 L. J. Ch. 560; *Lee v. Nuttal*, 48 L. J. Ch. 616; L. R. 12 Ch. D. 61; *Re Withernsea Brickwork Company, Limited*, 50 L. J. Ch. 185; L. R. 16 Ch. D. 337.)

This priority is given to the judgment creditor on the ground of his superior diligence as compared with other creditors. Sect. 10 of the Judicature Act, 1875, does not affect the rights of secured creditors *inter se*, or of unsecured creditors *inter se*.

19. *Enumerate briefly the chief steps after decree in a partnership dissolution action. A partnership between A. and B. is determined by the death of A., after which B. continues the business without settling with A.'s representatives. What are the rights of A.'s representatives and B. respectively?*



After the decree has been obtained, the chief steps briefly are:—

- (1.) Leave a certified copy of the decree at the judge's chambers.
- (2.) Issue, serve, and attend a summons to proceed under the decree, and carry out the chief clerk's directions given at the hearing.
- (3.) Answer the enquiries directed by the decree by affidavit.
- (4.) Bring in the accounts ordered to be brought in by the decree duly verified by affidavit.
- (5.) Pay into Court any money in the hands of the receiver, and file and get his accounts certified from time to time.
- (6.) Advertise for creditors, and pay their claims as directed by the chief clerk or judge.
- (7.) Bespeak chief clerk's certificate, and see that same is settled, signed and filed.
- (8.) If a summons is issued to vary the chief clerk's certificate, dispose of same; but if none is issued set down the action on further consideration and get an order for sale, if this has not been done already, and obtain the Court's opinion upon any disputed points arising under the special circumstances of the case. If the Court directs any further reference to chambers, carry out such directions as before, and obtain the chief clerk's certificate thereon, and again set the action down on further consideration. If the Court does not direct any further acts to be done, the Court will provide for the final disposition of the action, and direct how and by whom the costs will have to be paid.

In the above case A.'s representatives or B. can bring an action in the Chancery Division to have the partnership accounts taken and the amounts, found due to the parties entitled, paid to them. (And see further hereon Lindley on Partnership, 4th ed., 1045, 1046.)

20. *Under what circumstances will fraud in the prospectus of a limited company enable a shareholder to repudiate his shares: (1) when the company is a going concern; (2) when it is being wound up?*

*How will the right be affected by the sale of a portion of the shares before repudiation?*

- (1.) The remedy of a shareholder who has been induced to take

his shares by fraud is rescission and *restitutio in integrum*. He cannot retain the shares and have damages for the fraud in the same way as if it had been a purchase of goods where he could retain the goods and have damages. He cannot remain a member of the corporation and have damages against the corporation of which he himself is a member. (*Houldsworth v. Glasgow Bank*, L. R. 5 App. Cas. 317.)

Where it is clear that there has been a material misrepresentation or suppression, the shareholder is, unless barred by *laches* or acquiescence, entitled as against the company to have his name removed from the company's register. (*Downes v. Ship*, L. R. 3 E. & L. App. (H. L.) 343; 37 L. J. Ch. 642.) Application to the Court may be made either by action or in a proper case by motion or summons under the Companies Act, 1862, s. 35.

(2.) But while it is not competent for a person who was a party to the misrepresentation of which the shareholder complains to seek to retain the shareholder's name on the register, even though the latter may have been guilty of delay in applying for its removal (*Downes v. Ship*, *supra*), and while as against the company the shareholder may be entitled to relief if he come within reasonable time and under proper circumstances to apply for it; yet if the company be wound up, whether voluntarily (*Stone v. City and County Bank*, L. R. 3 C. P. Div. 282), or by or under the supervision of the Court, or if it stop payment, and its directors issue notices convening a meeting to pass resolutions for voluntary liquidation (*Muir v. Glasgow Bank*, L. R. 4 App. Cas. 337), and the contest thus becomes one between the shareholder and the creditors of the company, or between the shareholder and his co-contributories as distinguished from the corporation, this equity will be lost. (*Burgess's case*, L. R. 15 Ch. D. 507.) The doctrine is that after the company is wound up it ceases to exist so far as rescission of the shareholder's contract is concerned, and rescission is impossible. There are then only creditors and contributories, and no company. (*Per Jessel, M.R., Burgess's case, supra.*)

If a man has with his own consent become fully a legal shareholder by registration of shares which he has agreed to take, then if he have not avoided the contract, or done what is tantamount to avoiding it (*Rees Silver Mining Co. v. Smith*, L. R. 4 H. L. 64), before the commencement of the winding-up, or before stoppage

and notice of meeting to wind-up, he is liable as a contributory, and equities which would be good as between the shareholders and the company cannot, after a winding-up, be set up against the creditors of the company or his co-contributors. "Whenever the rights of other persons intervene, a contract to take shares, though induced by fraud, cannot be rescinded." (*Per* Bramwell, J., *Stone v. City and County Bank*, L. R. 3 C. P. D. 309.) A contract induced by fraud is not void, but voidable at the option of the party defrauded, provided that he avoids it while matters remain in their former position. (*Deposit Life Assurance Co. v. Ayscough*, 6 E. & B. 761; *Urquhart v. Macpherson*, (P. C.) L. R. 3 App. Cas. 831.) And by a contract being voidable, it is not meant that it is void till ratified, but that it is valid until rescinded where the rights of third parties intervene; and if before it be rescinded a winding-up be commenced, or the concern cease to be a going concern, the shareholder can no longer be relieved, but will be held liable as a contributory. (*Oakes v. Turquand*, 36 L. J. Ch. 949; L. R. 2 E. & L. App. 325.)

But if before the commencement of the winding-up or the stoppage of the company the shareholder have dissolved, so far as he can, all connection with the company, and have taken proceedings to have his name removed from the register and to rescind the contract, he will, on a proper case being made out, be entitled to relief, although between the date of his issuing his writ and the decree of the Court upon it an order has been obtained to wind up the company; for the rescission, when effected by the order of the Court, dates not from the order, but relates to the period when by issuing his writ the shareholder has taken proper steps to rescind the contract. (*Rees Silver Mining Co. v. Smith*, L. R. 4 H. L. 64.)

The shareholder may, however, still have a remedy against the directors or promoters of the company if he can bring the fraud home to their door. (See *Ship v. Crosskill*, L. R. 10 Eq. 73.)

If a shareholder sell a *portion* of the shares, whether he will or will not be entitled afterwards to repudiate his contract as to the remainder would depend very much on the circumstances of each case. In *Maturin v. Tredinnick* (2 N. R. 514; 4 N. R. 15) the shareholder's right to repudiate his contract as to the remaining shares was held not to be affected by his previous sale of a portion. In *The Hop and Malt Exchange and Warehouse Co., Ex parte*

*Briggs* (35 L. J. Ch. 320; 35 Beav. 273; L. R. 1 Eq. 483), a person who had been induced to take shares by misrepresentation was held not entitled to repudiate the shares after he had attempted to sell them with full knowledge of the facts. (See *Buckley's Companies Acts*, 4th ed., 94, 105, 106, 109.)

---

3. THE PRINCIPLES OF LAW AND PROCEDURE IN MATTERS USUALLY DETERMINED OR ADMINISTERED IN THE QUEEN'S BENCH DIVISION OF THE HIGH COURT OF JUSTICE, AND THE LAW AND PRACTICE OF BANKRUPTCY.

21. *A. and B. each keep an account at the same banker's. A. owes B. money, and the banker, having a general authority from B. to receive moneys for him, and upon the request of A., transfers the amount due from A. to B. to the account of B. The banker does so, although A. had already overdrawn his account. The banker the next day becomes bankrupt, and B. then brings his action against A. for the amount of his debt. Can he recover? State generally the rights of the respective parties.*

A. has a complete defence against B.'s claim, viz.:—payment to B.'s authorised agent. (*Eyles v. Ellis*, 4 Bing. 112; and see *Bodenhams v. Purchas*, 2 B. & Al. 39; Chitty on Contracts, 10th ed., 683.) The trustees of the banker's creditors can sue A. for his overdrawn balance and the amount transferred to B.'s credit at his request, and B. can prove against the banker's estate for the amount standing to his credit when the failure took place, including the sum transferred from A.'s account to B.'s account.

22. *A ship being in a foreign port, and requiring stores and other necessities for the further prosecution of her voyage, the master orders goods from a storekeeper in the port upon the credit of the owner of the ship. The owner has an agent resident in the port authorised to supply the ship's requirements. The storekeeper, who might have ascertained that fact, nevertheless supplies the goods to the master, and afterwards brings an action against the owner for the price. Is he entitled to recover? Give reasons.*

The plaintiff in this case must show that he had the owner's authority, either express or implied. He cannot show any express authority to supply the goods in question because he had none. "Now the master of a ship has implied authority to bind the owners to pay money only when necessity compels him to pledge their credit. If he borrows money in their name the ship must be lying in a port where he cannot get funds from the owners or from an agent recognised by them; if he buys goods they must be reasonably necessary for the ship, but the mere circumstance of stores being required for her use does not in itself warrant him in ordering them upon credit; it must be shown to have been reasonably requisite to buy them by pledging the owner's credit. If the master is in a foreign port where he is destitute of funds and where there is neither an owner nor an agent, reasonable necessity may exist to obtain what is requisite upon the credit of the owners; but if the vessel is in a home port where the owners can be easily communicated with, or if she is in a foreign port where they are personally with means and funds enabling them to furnish her with what is wanted, the master has no power to bind the owners' credit, and upon such facts a jury ought to be directed that it cannot be requisite for the master to contract debts in the owners' name. A similar rule is to be observed when the vessel lies in a port for which an agent has been appointed. After he has accepted the duty of supplying the vessel he stands in the place of the owners; it is no longer necessary for the master to contract debts on account of the ship, and his discretion is taken away by the presence of the agent. . . . Before a creditor for supplies to a vessel in a foreign port can recover from the owners he must show, first, that the things obtained by the master for the ship's use were such as a prudent owner would order if he were present; secondly, that neither the owners nor an agent appointed by them were present at the port; if the plaintiff fails in proving either of the foregoing conditions he fails to establish a contract binding upon the owners. . . . The burden of proof lies upon the creditor; he must show that in the port where the ship was lying no agent had been nominated with authority to supply the ship; if he does not make this out he does not establish the authority of the captain to incur debts for the ship's use, and he is not entitled to hold the owners liable. The rule which I have mentioned is

in accordance with the law administered in the (now) Admiralty Division as to hypothecation, the holder of a bottomry bond must show authority in the master to execute it; the liability of the shipowner under such an instrument is extensive, and it is imperative to establish, not only that the money was indispensable for the prosecution of the voyage, and that neither the owner nor an agent appointed by him was in the port where the ship was lying, but also that by no other means than a bottomry bond could the requisite funds be raised. . . . The weight of previous authorities is to the effect that the knowledge of the creditor whether the ship had an agent in the port where she is staying is immaterial." (*Per Brett, M. R. then J., Gunn v. Roberts*, 43 L. J. C. P. 233, 236; L. R. 9 C. P. 331.) The storekeeper might here and should have ascertained the fact of the agent being resident in the port with ample authority to do what was requisite without the plaintiff's assistance. The plaintiff is therefore not entitled to recover.

23. *Is an executor personally liable in any and what case for the funeral expenses of his testator although he does not order or contract for the funeral?*

If an executor or administrator give orders for the funeral of the deceased, or ratify orders given for it by another, he will be personally liable for the reasonable expenses thereof. (2 Wms. on Exors. 1404; *Brice v. Wilson*, 8 A. & E. 349.) And it would seem that where an executor neglects to give orders for the funeral of his testator and has sufficient assets, he is personally liable upon an *implied* promise for the expenses of a funeral suitable to the testator's degree and circumstances, unless such expenses were incurred on the credit of some other person. (*Per Patteson, J., Brice v. Wilson*, 8 A. & E. 349, 350; *Rogers v. Price*, 3 Y. & J. 28; *Corner v. Shew*, 3 M. & W. 350, 356; Chitty on Contracts, 10th ed., 245.)

24. *C. and D. agree, in writing, for the sale by the former to the latter of a stack of hay for say £100, payable on the ensuing 1st of January; the hay to be allowed to stand on the seller's premises until the following 1st of March, but not to be cut till paid for. Afterwards and before payment of the price, and whilst the hay is*

*on the seller's land, it is accidentally destroyed by fire. Upon whom will the loss fall? Give reasons for your answer.*

The purchaser, because the property in the hay, together with risk of loss by accident, passed upon the execution of the agreement for sale in writing. (Chitty on Contracts, 10th ed., 347, 348.)

*25. Action, lessor against lessee, to recover possession of demised premises in consequence of the following breaches of covenant by lessee:—(1) Not repairing; (2) not insuring; (3) under-letting without licence; (4) waste; (5) non-payment of rent. Has the Court the power to grant relief to the lessee in respect of the above breaches, or any, and which of them? Is it necessary for the lessor to take any, and, if any, what step before he can maintain the action? Refer to any statute on the subject.*

(1), (2) and (4). In either of these cases it is necessary, before bringing any action, to recover possession under his power of re-entry where a peaceable re-entry is refused, and where it is not refused, before making a peaceable entry, for the lessor to serve on the lessee a notice specifying the neglect to repair, or to insure, or the commission of the waste complained of, and therein to require the lessee to repair, or to insure, or to repair the waste; and also requiring the lessee to make compensation in money for the past neglect to repair, or to insure, or past commission of waste, and then to wait a reasonable time. If, after acting thus, the lessee fails to repair, insure, or to repair the waste (as the case may be), and to make a reasonable compensation in money to the satisfaction of the lessor for the neglect to repair, insure, or commission of the waste complained of, the lessor may then make a peaceable re-entry on the premises, if that is possible, or bring an action to recover possession, but not before.

If the lessor, either without first complying with the above conditions or after having complied with them, bring his action to recover possession of the demised premises, the Court has a full discretion to grant relief to the lessee upon his applying in such action, and on such terms (if any) as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any similar neglect to repair, or insure, or

commission of waste in the future, as the Court, in the circumstances of each case, thinks fit.

(3.) In this case the lessor can re-enter peaceably or bring his action to recover possession *at once*, and the Court has no power to relieve the lessee without the consent of the lessor, either in that or in any other action.

(5.) In this case the lessor can bring his action at once or re-enter peaceably, and so recover the demised premises; but the Court may grant relief on an application being made by the lessee *within six months* after the date of execution issued on the judgment recovered in such an action, but not after the six months have expired without the lessor's consent.

(44 & 45 Vict. c. 41, s. 14; 15 & 16 Vict. c. 76, s. 210; and 23 & 24 Vict. c. 126, s. 1; Clerke and Brett's Conveyancing Act, 1881, 60—64.)

26. *The master of an apprentice becomes bankrupt. What effect has the order of adjudication upon the apprenticeship, and what are the rights of the apprentice?*

The rights are defined by the Bankruptcy Act, 1869, s. 33, which provides as follows:—"Where at the time of the presentation of the petition for the adjudication any person is apprenticed or is an articulated clerk to the bankrupt, and any money has been paid to the bankrupt as a fee, the trustee, on the application of the apprentice or clerk, may refund such sum as to him seems reasonable, regard being had to the amount originally paid and to the time served under the indenture or articles, and the order of adjudication is, if notice in writing be given by the bankrupt or apprentice, or clerk, to be a complete discharge of the indenture of apprenticeship or articles of agreement, or if the trustee chooses he may, on the application of the apprentice or clerk, transfer the indenture or articles to some other person." (Haynes's Student's Statutes, 2nd ed., 335, 336.)

27. *Promissory note in the following form:—*

"January 1, 1883.

"Six months after date I promise to pay to Thomas Brown the sum of £100, value received.

"John Williams."

A A



*Has the payee a right to negotiate the note by indorsement over to a third party? Give reasons for your answer, and state the difference between a blank and special indorsement.*

Yes, by virtue of the Bill of Exchange Act, 1882, s. 84. To make a bill of exchange or promissory note *not* negotiable now, it must contain words prohibiting transfer or indicating an intention that it should not be transferable.

An indorsement in blank is one which specifies no indorsee, and a bill or note so indorsed becomes payable to bearer.

A special indorsement is one which specifies the person to whom or to whose order the bill or note is to be payable. (45 & 46 Vict. c. 61, s. 34; Haynes's Student's Statutes, 3rd ed., 13.)

28. *A. buys from B., a broker, two parcels of goods belonging to different principals, and makes a payment, on account, larger than either debt, but not sufficient to pay both, without any specific appropriation. B. afterwards, and before making any payment or accounting to either of his principals for the amount received by him, becomes bankrupt. How must the loss be borne by the two principals?*

The loss must be borne proportionately by both principals. (*Favenc v. Bennett*, 11 East, 36; Smith's Mercantile Law, 9th ed., 546; see also *Harris v. Truman, Hanbury & Co.*, 51 L. J. Q. B. 338.)

29. *Within what time from the publication of an award can an application to the Court be made to set it aside? (1.) Agreement or submission to arbitration. (2.) Verdict at Nisi Prius, subject to a reference. (3.) Compulsory reference under the Common Law Procedure Act, 1854. When may an award be said to have been published?*

(1.) An application to set aside an award made under an agreement or submission to arbitration which contains a clause that it may be made a rule of Court, should be made before the last day of what, before the Judicature Acts, was the next term after the publication of the same. (9 & 10 Will. III. c. 15, s. 2; Haynes's

Student's Statutes, 2nd ed., 277; *Smith v. Whitmore*, 33 L. J. Ch. 218; *The Governors of Christ's Hospital, Brecknock v. Martin*, 46 L. J. Q. B. 591.) By r. 169, H. T. 1853, a rule to show cause why an award should not be set aside must state the objections thereto. (Prentice's Proceedings in an Action, 248, 249.)

(2.) Where a verdict is taken on a trial by jury and the action only is referred, and the arbitrator is put merely in the place of the jury, the motion to set aside the award should in ordinary cases be made within the time limited for a motion for a new trial, *i.e.*, four days, except when the trial takes place at any assizes. (See Judicature Acts, Order XXXIX.) The above rule (r. 169, H. T. 1853) does not, it seems, apply where an action only is referred. In such a case a rule *nisi* is not granted, but the application to set aside the award is made after notice of motion. (Judicature Acts, Order LIII.) It is as well that this notice should state the objections to the award to be relied on. (Prentice's Proceedings in an Action, 248, 249.)

(3.) An application to set aside an award made after a compulsory reference under the Common Law Procedure Act, 1854, must be made within the first seven days of what, before the Judicature Acts, would have been the term next following the publication of the award to the parties, whether made in vacation or term. (Sect. 9; Haynes's Student's Statutes, 2nd ed., 282; Prentice's Proceedings in an Action, 240.) By the Judicature Act, 1873, s. 26, the division of the legal year into terms is abolished, so far as relates to the administration of justice; but the terms may still be referred to for the purposes of determining the time at or within which an act is required to be done.

When the award is made the arbitrator gives notice to the parties or to their solicitors, when they have appeared before him by solicitors, that it is ready for delivery. An award is considered as published, within the meaning of the 9 & 10 Will. III. c. 15, s. 2, and within the meaning of the rule for regulating the time for making an application to set aside an award, from the time of giving this notice. (Prentice's Proceedings in an Action, 247.)

30. *It becomes necessary in an action to prove a devise of real estate. Is it necessary to produce the original will at the trial, or are there any, and, if any, what means; and if so, under any and*

*what statute whereby such devise can be proved otherwise than by production of the original will ?*

Not as a general rule, for under sect. 64 of the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), the party intending to establish such devise or other testamentary disposition of or affecting real estate, may give to the opposite party, ten days at least before the trial or other proceeding in which the proof shall be intended to be adduced, notice that he intends at the said trial or other proceeding to give in evidence as proof of the devise or other testamentary disposition the probate of the will, or the letters of administration with the will annexed, or a copy thereof stamped with any seal of the Court of Probate ; and in every such case such probate or letters of administration, or copy thereof, respectively, stamped as aforesaid, shall be sufficient evidence of such will and of its validity and contents, notwithstanding the same may not have been proved in solemn form, or have been otherwise declared valid in a contentious cause or matter, as herein provided, unless the party receiving such notice shall, within four days after such receipt, give notice that he disputes the validity of such devise or other testamentary disposition. (Haynes's Guide to Probate and Divorce, 2nd ed., 69.)

---

**4. THE PRINCIPLES OF LAW AND PROCEDURE IN MATTERS USUALLY DETERMINED OR ADMINISTERED IN THE PROBATE, DIVORCE, AND ADMIRALTY DIVISION OF THE HIGH COURT OF JUSTICE, ECCLESIASTICAL AND CRIMINAL LAW AND PRACTICE, AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.**

*31. State, in accurate language, the general principle of law as to the extent to which responsibility for the commission of a crime may be affected by insanity, and illustrate your answer by example.*

"It is agreed by all jurists, and is established by the law of this and every other country, that it is the reason of man which makes

him accountable for his actions, and that the deprivation of reason acquits him of crime. Neither in civil nor in criminal cases, however, will our law—provided a man be *compos mentis*—measure the degree of his capacity. A weak man, albeit much below the ordinary standard of human intellect, is bound by his contracts, may exercise dominion over his property, and is responsible for his crimes. From such responsibility he alone is emancipated who is, in the language of our law, *non compos mentis*. The main inquiry before us, accordingly, is this:—What may, in connection with criminal law, be the meaning and significance of the phrase just used? What is that kind or species of insanity which exempts from punishment on the ground that its existence is inconsistent with the criminal intent? Clearly it is not every degree of insanity which suffices for this purpose. Many men of general ability are upon some one topic insane, provided their opinions be tested by those entertained by the world at large. One labouring under the grossest delusions may, for many purposes, be treated and held accountable as if sane; *e.g.*, he may possibly be admitted to give evidence on a criminal trial in a court of law; and where such an objection is taken to the competency of a witness, it is for the judge to say whether the insane person has the sense of religion in his mind, and whether he understands the nature and sanctity of an oath; and then the jury will have to decide on the credibility of and weight due to his evidence. It is clear, then, that a man may be *non compos mentis quod hoc*, and yet not *non compos mentis* altogether.”

“In *M'Naghten's case* the accused was charged with murder, and, the fact of wilful homicide being established, the defence of insanity was set up, supported by evidence that the accused was affected by morbid delusions which carried him beyond the power of his own control as regarded acts connected therewith, and left him no moral perception of right and wrong. It was further shown to be the nature of the disease under which the prisoner suffered, gradually to acquire intensity, and then suddenly to develop itself with great violence; the prisoner was acquitted on the ground of insanity. In consequence of this verdict, which led to some discussion in the House of Lords, certain questions were by that House proposed to the judges, from the answers to which, given by the majority of the Bench, must be deduced the degree of criminal responsibility

attaching to one affected with mental disease; it becomes necessary, therefore, in this place to set out the substance of the question, on the occasion alluded to, thus formally proposed, and of the answers advisedly returned thereto."

"The question submitted to the judges in *M'Naghten's case* was as follows:—"What is the law respecting a legal crime committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons, as for instance where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit?" To this question the answer given was, that a person labouring under such partial delusion only, and not being in other respects insane, although he did the act complained of with a view, under the influence of insane delusion, of redressing or avenging some supposed grievance or injury, or of producing some public benefit, is nevertheless punishable according to the nature of the crime committed, "if he knew at the time of committing such crime that he was acting contrary to law," i.e., to the law of the land."

"We further collect from *M'Naghten's case* that, when a person alleged to be afflicted with insane delusions respecting one or more particular subjects or persons is charged with the commission of a crime, and insanity is set up as a defence, the jury should be instructed that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly shown that at the time of the committing of the act charged in the indictment the party accused was "labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong." If the accused was conscious that the act in question was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable. The usual course, accordingly, is to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act which was wrong, the

question thus submitted being accompanied with such observations and explanations as the circumstances of each particular case may require."

"It is essential to constitute responsibility for crime that a man shall understand the nature and quality of the thing he is doing, or that he shall be able to distinguish in the act he is doing right from wrong. Now, a very small degree of intelligence is sufficient to enable a man to judge of the quality and nature of the act, and whether he is doing right or wrong, when he kills another man; accordingly, he is responsible for the crime committed if he possesses that amount of intelligence."

"Another question of much interest also sometimes presents itself on a criminal trial:—If a person under an insane delusion as to existing facts commits an offence in consequence thereof, is he thereby excused? The answer to this question is, that if the accused labours under a partial delusion only, and is not in other respects insane, he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if, under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury on his character and fortune, and he killed in revenge for such supposed injury, he would be liable to punishment."

"To the evidence of scientific men conversant with the disease of insanity, who have examined and conversed with the accused person, who can, besides testifying to his words and actions, explain the nature of the delusions under which he may be labouring, and the ordinary effect of such delusions upon the mental functions, much weight will naturally be attached by a jury, when engaged in the arduous task of investigating the question, whether one accused of crime was sane or insane at the time of its commission. Where, moreover, on the trial of such an issue, the facts of the case are admitted, or not disputed, and the question becomes substantially one of science only, it may be convenient to ask a medical witness, who has been present during the trial, his opinion as to the state of the prisoner's mind at the

time of the commission of the alleged crime, and as to his perception of the difference between right and wrong; but, as we learn from *M'Naghten's case*, it is not a matter of right to put such a question."

"Amongst medical practitioners, however, and those experts who have appeared as witnesses to give evidence touching insane and morbid delusions at criminal trials, a wide difference of opinion exists on various important points relating to the responsibility of persons mentally affected, and mainly as to these fundamental questions:—Are there states and conditions of mind in which responsibility is modified only, not annulled? May the insane be, in certain cases, fit objects for punishment? Nay, further, may not punishment be so applied to some criminals of unsound mind, that the reason of its applications may be appreciated by them and beneficial results thence ensue? It is the opinion of some scientific men that much may be said in favour of a scale of punishments for the insane, graduated—so far as the results of experience and observation may permit—to their different degrees of responsibility and criminality. \* \* \* \* \* When a person, upon his trial for an alleged crime, seeks to excuse himself upon a plea of insanity, it will be for him to make out clearly that he was insane at the time of committing the offence charged against him. The onus of so doing rests on him, and the jury must be satisfied that at the time in question he actually was insane. If the matter be left in doubt it will be their duty to convict him, for, as already stated, 'every man must be presumed to be responsible for his acts till the contrary is clearly shown.'"

"It is now provided by statute that if upon the trial of any person, whether for treason, felony, or misdemeanour, evidence is adduced of his insanity at the time of committing the act charged against him, and the jury acquit him, they must be required to find specially whether he was insane at the time in question, and to state whether he is acquitted on the ground of insanity; and if so, the judge presiding at the trial may order the prisoner to be kept in custody until the Queen's pleasure be known respecting him. It sometimes happens that, upon arraignment on a criminal charge, the accused appears manifestly to be insane: when this is so, the question as to his sanity will have to be tried by a jury

returned instant for that purpose, and, if found to be insane, the detention of the prisoner will be ordered."

(Broom's Common Law, 5th ed., 861—866; *M'Naghten's case*, 10 Cl. & F. 200; *Hadfield's case*, 27 How. St. Tr. 1309—10.)

32. *What conditions must accompany the obtaining of money from another person so as to constitute the criminal offence of false pretence?*

The points to be proved on an indictment for false pretences are the following:—

(1.) The pretence and its falsity.

The pretences must be wholly or in part of an *existing fact*; for example, a false statement of one's name and circumstances in a begging letter.

(2.) That the property or some part thereof was obtained by means of the pretence.

(3.) The intent to defraud.

It is, however, sufficient to allege in the indictment and prove at the trial an intent to defraud generally, without alleging or proving an intent to defraud any particular person.

Obtaining property by false pretences is a misdemeanour, punishable by penal servitude to the extent of five years, or imprisonment for not more than two years. (24 & 25 Vict. c. 96, ss. 88 and 89.) It is subject to the provisions of the Vexatious Indictments Act. The defendant is not entitled to be acquitted for the misdemeanour because the facts show that the offence amounts to larceny; but no person tried for such misdemeanour is liable to be afterwards prosecuted for larceny upon the same facts. (24 & 25 Vict. c. 96, s. 88; Harris's Principles of the Criminal Law, 231, 233.)

33. *What step must in general be taken preparatory to the issuing of a summons by a justice of the peace? When may this step be lawfully dispensed with, and in what mode may its unlawful omission be cured?*

"The mode of commencing proceedings before justices of the peace is by preferring a complaint or information. When an order for the payment of money or otherwise is sought, this preliminary step



is designated a complaint; while the same step is called an information when it is the foundation for summary proceedings of a criminal nature, which are followed either by a conviction or an acquittal. A magistrate cannot proceed against an unwilling defendant without an information. (*Reg. v. Millard*, 12 Cox C. C. 167.)"

"Under some particular statutes an information is not necessary to initiate the proceedings in consequence of there being an express dispensation relative thereto; but in practice it is usual for magistrates in all cases to require an information in writing before they will issue a summons. This document may properly be dispensed with in those cases where justices are authorised to convict upon their own view of the commission of an offence, as by 8 Hen. VI. c. 9, for forcible detainment; by 19 Geo. III. c. 21, s. 2, for profane swearing; by 5 Geo. IV. c. 83, the Vagrant Act; by General Highway Act, 5 & 6 Will. IV. c. 50, s. 78; or by Waterworks Clauses Act, 26 & 27 Vict. c. 93, s. 3. But it is in general absolutely necessary that an information or complaint should be laid or made to justify the issuing of a summons; but the appearance of a defendant and his answering to a charge before the justices without objection to the want of an information or summons may operate to cure the want of either or both. (*Turner v. The Postmaster-General*, 5 B. & S. 82; 34 L. J. M. C. 11; *Reg. v. Hughes*, L. R. 4 Q. B. D. 614; 48 L. J. M. C. 151.) The rule of law is that unless a statute requires it an information need not be in writing (*Reg. v. Millard*, 1 Dears. C. C. 166, *per Parke, B.*); and putting it in writing is a matter of procedure only (*Reg. v. Shaw*, 34 L. J. M. C. 169); and under 11 & 12 Vict. c. 43, it is not necessary that informations should be in writing; for it expressly enacts in sect. 8 that complaints upon which an order for the payment of money or otherwise may be made need not be in writing, unless it shall be required to be by some particular Act of Parliament upon which such complaint may be framed. Sometimes the statute expressly dispenses with a *written* information, *e.g.*, by the Highway Act, 5 & 6 Will. IV. c. 50, s. 101; but when the application is for a warrant in the first instance, though the statute does not require that the information should be in writing, it is better that it should be. The appearance of the defendant and no objection made to the want of written complaint would cure this

defect, if any. Unless specially required by some Act of Parliament, the complaint or information, as the case may be, is exhibited without oath." (11 & 12 Vict. c. 43, s. 10; *Reg. v. Millard*, 1 Dears. C. C. 166; Stone's Manual of Practice for Justices of the Peace, &c., 9th ed., 54—56.)

34. *Upon what points does the Court require to be satisfied before granting probate of the will of a married woman purporting to be made in exercise of a power, and in what terms is the grant expressed?*

Where probate is granted of a married woman's will, made by virtue of a power or administration with such will annexed, the power under which the will purports to have been made must be specified in the grant. The registrars require, on the oaths to lead such grants being brought to the principal registry for settlement, a statement to be furnished setting forth the particulars of the property claimed to be appointed or disposed of by the will; and in case such property or any portion of it consists of stock in the public funds standing in the name of the testatrix, the exact amount and description of such stock, and how the same was acquired; and if acquired under a deed or will, a copy or extract of the deed or will, or of so much thereof as may refer to the stock in question. (Browne's Probate, Law and Practice, 115, 430.)

35. *A testator domiciled in this country dies, leaving assets in England, Scotland, and France, all of which assets he has disposed of by will made in accordance with English law. In respect of what assets will probate duty and legacy duty respectively be payable in England? Explain the governing principle of your answer.*

The probate or administration duty is payable in respect only of such personal estate as at the time of the death of the deceased is within the jurisdiction of the Court; consequently property which at the death is in a foreign country is exempt from duty, although it may be subsequently brought into this country by the executor. Thus it has been held that French Government *Rentes* and United States stock are exempt from probate or administration duty, while, on the other hand, the duty has been held to attach to the securities

of a foreign Government which were in this country at the death of the deceased, and were marketable securities, here transferable by delivery only. (*Attorney-General v. Dimond*, 1 Cromp. & Jerv. 356; *Attorney-General v. Hope*, 1 Crom. M. & R. 530; *Attorney-General v. Bourens*, 4 M. & W. 171; 7 L. J. Ex. 297; see also *Attorney-General v. Pratt*, L. R. 9 Ex. 140.) Probate duty is also payable in respect of personalty disposed of under a *general* power. (23 Vict. c. 15, s. 4.) Probate duty is also payable in respect of the personalty in this country of a testator domiciled abroad. (Trevor's Taxes on Succession.)

The liability to legacy duty on the personal estate depends on the domicile of the deceased at the time of his death, all personal estate being supposed to be locally situate in the place where the owner died. If he was domiciled in England at the time of his death, his personal estate both in England and abroad is liable to the duty; but if he was domiciled abroad, no duty is payable on his personal estate either in England or abroad. (*Thompson v. The Advocate-General*, 12 Clark & Fin. 1; *Re Napier*, 6 Exch. Rep. 217.) And where a man who is domiciled abroad at his death makes his will under a general power, the personal property thus appointed is exempt from legacy duty. (*In re Wallop's Trust*, 33 L. J. Ch. 351.) But an estate *pur autre vie* in land in England, "applicable by law in the same manner as personal estate," is liable to legacy duty under sect. 20 of 36 Geo. III. c. 52, although the owner may be domiciled abroad. (*Chutfield v. Berchtoldt*, L. R. 7 C. A. 192; 2 Pridgeaux, 11th ed., 424 *et seq.*; Williams on Executors, 8th ed., 625.) Accordingly, in the above case probate duty will only be payable in respect of all personal property situate in the United Kingdom.

And legacy duty will be payable in respect of all the testator's personal property in the United Kingdom and in France. The debts due from the deceased to persons resident in the United Kingdom and the funeral expenses may, except where the whole assets without making any deduction do not exceed £300, and only £1 10s. is paid for duty, be deducted from the value of the personal property of the deceased for the purposes of arriving at the amount of probate duty payable; and where the probate is not granted before 1st June, 1881, no legacy or succession duty is payable on *personal* estate at the rate of one per cent., *i.e.*,

where the legatees are children or descendants of children of the deceased. (See Customs and Inland Revenue Act, 1881, 44 Vict. c. 12.)

It may also be mentioned that probate duty is payable on pure personalty and leaseholds, but legacy duty is only payable on pure personalty, succession duty being payable on leaseholds and real property by virtue of the Succession Duty Act, 1853. (16 & 17 Vict. c. 51; Haynes's Student's Statutes, 2nd ed., 199.)

*36. What relief may the Court grant to a wife, and by what authority, in a suit instituted by her husband for dissolution of marriage, where the wife opposes the petition on the ground of her husband's adultery, cruelty, or desertion?*

The Court has a discretion to grant or withhold the husband a decree of dissolution of marriage upon the wife proving either—

- (a.) The adultery of the petitioner; or
- (b.) Cruelty to the wife; or
- (c.) Desertion or wilful separation from the wife before the adultery alleged in the husband's petition, without reasonable excuse; or
- (d.) That the petitioner has been guilty of unreasonable delay in presenting or prosecuting his petition; or
- (e.) Has been guilty of such neglect or misconduct as has conduced to the adultery of the respondent. This is by virtue of 20 & 21 Vict. c. 85, s. 31.

If the wife seeks judicial separation, and has sufficient proof, she need not present a cross-petition, for by 29 & 30 Vict. c. 32, s. 2, where a husband's petition for dissolution is met by a countercharge of adultery, cruelty, or desertion, or a wife's petition by adultery or cruelty, the Court may give to the respondent the same relief as though his or her countercharge were an original petition. (Browne's Divorce Practice, 109—122, 226.)

*37. What is a salvage agreement? By what general principle will the Court be guided in arriving at a conclusion as to whether or not such an agreement can be sustained; and in case of its being disputed, where does the onus probandi rest?*

“It is an agreement entered into with respect to property saved, and made between the owners and the salvors of the property.”

"In determining the amount, if any, of salvage reward to be awarded, which is wholly in the discretion of the Court, there are three chief elements to be considered: (a) The extent of the peril of the object saved; (b) its actual value; (c) the nature of the salvor's services. But a contract, written or verbal (*The Firefly*, Swa. 240), as to the amount of the reward, made either between persons saved, or the owners of or those having authority over the saved property, is binding on the parties, and will be enforced by the Court as to the subject-matter of such agreement (*The Mulgrave*, 2 Hagg. 77; *The True Blue*, 2 W. Rob. 176), unless it is clearly inequitable (*The Enchantress*, Lush. 93; 30 L. J. Ad. 15), from its character, or from the circumstances under which it was made, and unless one of the parties are public officials, who, being bound to render salvage services for which they will be properly rewarded when they claim in respect thereof, cannot legally enter into a salvage agreement. (*The Curgo ex Woosung*, 1 L. R. Ad. D. 260; 44 L. J. Ad. 45.) Every agreement also by which seamen abandon their right to salvage is inoperative (M. S. Act, 1854, s. 182; *The Rosario*, 2 L. R. Ad. D. 41; 35 L. T. N. S. 816; *The Afrika*, L. R. 5 P. D. 192; 49 L. J. Ad. D. 63; *The Pride of Canara*, Br. & Lush. 208; 9 L. T. N. S. 546), if it is a total abandonment of a reward which would be due, and not merely an agreement to take a certain sum. This would be a valid contract if it was not vitiated by any of the circumstances which would nullify any other salvage agreement. By the terms of their contract of service, which must be most clearly proved, seamen who engage themselves to a ship to be employed on salvage duty, and in return for their labour agree to receive a fixed and equitable remuneration, will be bound by such an agreement, if it is fair and just. (25 & 26 Vict. c. 63, s. 18; *The Ganges*, 2 L. R. Ad. 370; 38 L. J. Ad. 61.) The Court has power in its discretion to set such a contract, like any other, aside, and regards all such agreements very jealously."

"An agreement will also be set aside by the Court as inequitable unless it is made with fairness and impartiality by both parties, who must from the very nature of such a maritime contract be prepared to take the risk of changing circumstances. (*The Waverley*, 3 L. R. Ad. 369; 40 L. J. Ad. 42.) Both parties, also, must be competent to form a judgment as to the obligations arising out of the agreement into which they enter, and there must be a clear understanding

as to its nature. (*The True Blue*, 2 W. Rob. 176.) The following circumstances will cause agreements to be set aside as inequitable: When the reward is futile and utterly inadequate, or so exorbitant as to be manifestly inequitable (*The Phantom*, L. R. 1 Ad. 58; 14 W. R. 774; *The Theodore*, Swa. 351; *The Silesia*, L. R. 5 P. D. 177; 50 L. J. Ad. D. 9); concealment of material facts, that is, of facts the withholding of which would be likely to be injurious to either of the parties to the agreement (*The Canova*, L. R. 1 Ad. 54; 12 Jur. N. S. 528); powerlessness to resist salvor's demands, so that the agreement is in fact made under compulsion (*The Cargo ex Woosung*, L. R. 1 Ad. D. 260; 44 L. J. Ad. 45; *The Medina*, L. R. 2 Ad. D. 272; 35 L. T. N. S. 799); and fraud or corruption of any kind" (*The Westminster*, 1 W. Rob. 228; *The Crus V.*, Lush. 583; *The Kingalock*, 1 Spk. 265; *The Theodore*, Swa. 351).

"In all cases connected with salvage agreements the amount of the award is very important evidence in support of the validity or invalidity of such agreements. Thus in one case eight shillings and sixpence was held to be so insignificant a reward as to vitiate the agreement; whilst in another £15,000 was considered an unreasonably large sum. (*The Phantom*, L. R. 1 Ad. 58; *The Silesia*, L. R. 5 P. D. 177; 50 L. J. Ad. D. 9.) The master of a ship can bind his owners by a fair agreement (*The Britain*, 1 W. Rob. 40; *The Afrika*, 1 Spk. 300; *The Helen and George*, Swa. 368; *The Theodore*, Swa. 357), but not the crew, unless they assent to the agreement at the time, or subsequently ratify it (*The Sarah Jane*, 2 W. Rob. 110). Those who set up such an agreement in an action for salvage must first clearly prove it; after which those who impugn its validity must establish facts sufficient to avoid it." (*The Salacia*, 2 Hagg. 265; *The Helen and George*, Swa. 368; Roscoe's Admiralty Law and Practice, 2nd ed., 21—23.)

38. *In what class of actions in the Admiralty Division, and at what stage of the proceedings, is it necessary to file a preliminary act? What particulars must the document contain, and in what, if any, cases may it supersede the necessity for pleadings?*

The preliminary act must be filed in actions for damages by collisions between vessels, unless the contrary be ordered. The document called the preliminary act, which is sealed up and not

opened until ordered by the Court or a judge, must be filed by the solicitor on each side before any pleading is delivered. It must contain the following particulars :—

- (1.) The names of the vessels which came into collision, and the names of their masters.
- (2.) The time of the collision.
- (3.) The place of the collision.
- (4.) The direction of the wind.
- (5.) The state of the weather.
- (6.) The state and force of the tide.
- (7.) The course and speed of the vessel when the other was first seen.
- (8.) The lights, if any, carried by her.
- (9.) The distance and bearing of the other vessel when first seen.
- (10.) The lights, if any, of the other vessel which were first seen.
- (11.) Whether any lights of the other vessel, other than those first seen, came into view before the collision.
- (12.) What measures were taken, and when, to avoid the collision.
- (13.) The parts of each vessel which first came into contact.

When both solicitors consent, the Court or judge may order the preliminary acts to be opened and evidence to be taken thereon, without its being necessary to deliver any pleading.

(Order XIX., r. 30 ; Haynes's Guide to Admiralty, 50, 51.)

39. *What is the nature of the estate of an incumbent of an ecclesiastical benefice, and what, if any, liability devolves upon him in connection with the buildings and glebe lands upon the benefice ?*

The lands which form one of the sources of revenue of persons ecclesiastical are held by them in each instance as a corporation either aggregate or sole. But bishops, rectors, parsons, vicars, and other ecclesiastical persons, while they have in their corporate capacity the fullest possible right in their lands to themselves and their successors, are yet in their individual capacity considered in most respects as tenants for life of those lands which they hold *jure ecclesiæ* (Vin. Abr.). As to rectors, parsons and vicars, Lord Coke says, that for the benefit of themselves and their successors they were in some cases esteemed in law to have a fee simple or qualified. But if anything was to be done to the prejudice of

their successors, the law esteemed them to have in effect but an estate for life, and since by several statutes all ecclesiastical estates are restrained from alienation they are generally considered as *quasi* tenants for life only. (I. Inst. 44 *a*; *ibid.* 341 *a* and *b*; Cruise Dig. tit. 3, ch. i.; Litt. 648.) Consequently, like all tenants for life, they are prohibited from destroying those things which are not included in the temporary profits of the land, because that would tend to the lasting loss of their successors. Such destruction is called waste, which all ecclesiastical corporations are disabled from committing. (Vin. Abr. tit. Dilapidations; The Laws of the Church and Clergy, by H. W. Cripps, Q.C., 238—241.)

The incumbent is bound to keep the buildings of the benefice, including the parsonage house and, unless there is a lay rector, the chancel, in good repair. The duties of an incumbent as regards repairs have been consolidated and codified by the Dilapidations Act, 1871. Under this Act either the incumbent himself or the archdeacon, the rural dean, or patron of the benefice, may apply to the bishop of the diocese for an inspection of the buildings. The bishop may then order an inspection to be made by the diocesan surveyor. A copy of such complaint must be forwarded by the bishop to the incumbent, or the sequestrator where the living has been sequestrated, a month before the inspection is ordered. The surveyor reports (1) what repairs are necessary; (2) their probable cost; and (3) when they ought to be executed. The incumbent or the sequestrator, if any, may then object to the report. If no objections are made the report is final. When objections are made, the report, as modified by the bishop's decision, is final. If the incumbent fail to carry out the repairs within the prescribed time, the bishop may raise the necessary funds by sequestration of the benefice. Where the repairs have been completed to the satisfaction of the surveyor, the incumbent is entitled to a certificate, which exempts him from all liability to a further survey or report for five years, and if he vacates the benefice within that period exempts him and his personal representative from all claims for dilapidations except for wilful waste. But to secure himself from loss or damage arising from fire within the five years, the incumbent must have insured the house and buildings belonging to the benefice to at least three-fifths of their value before the certificate is filed, and must continue the insurance. \* \* On any vacancy



(except where a certificate of repairs granted within five years is held) through death or otherwise, an inspection by the diocesan surveyor must be directed by the bishop within three months of its occurrence, and objections may be taken to it both by the new incumbent and the one who is leaving the benefice, or by the representatives of the deceased incumbent. (And see hereon *Caldon v. Pixell*, L. R. 2 C. P. D. 562.) The sum ordered to be paid for dilapidations is recoverable as a debt due from the representatives of the late incumbent to the new one. The incumbent is required to insure all the buildings belonging to the benefice in some insurance office satisfactory to the Governors of Queen Anne's Bounty, in the names of himself and such governors, to at least three-fifths of its value, and to produce the receipts for the premiums on the visitation of the bishop or archdeacon. Where any building is destroyed by fire and the insurance company elect to pay the money instead of reinstating the building, the money is paid to the Governors of Queen Anne's Bounty and applied in making the repairs. The incumbent has to make up any deficiency in the money recovered on the insurance.

The glebe is the land which is attached to a church for the support of the priest serving it. Formerly a church could not be consecrated without an endowment in land, and hence all ancient churches have a glebe. Although the freehold of the glebe vests in the incumbent for the time being as a corporation sole, he is regarded by the law as a tenant for life, and is prevented from alienating the estate. If the glebe lands are retained in the possession of the incumbent he may cultivate them in any way he pleases, but he cannot commit waste of any kind. The glebe lands and buildings may be leased by the incumbent for any term not exceeding fourteen years or twenty years where the tenant covenants for improvements. (*Bird v. Relfe*, 4 B. & Ad. 826; 2 Ad. & Ell. 773; 1 Nev. & Man. 415; *Knight v. Moseley*, Amb. 176; *Huntley v. Russell*, 13 Ad. & E. Q. B. 572; 5 & 6 Vict. c. 27, s. 1.)

The lease, which must be at the best rent and made without fine, must take effect in possession, and not in reversion or by way of future interest. The patron of the benefice, bishop of the diocese, and, if the lands are copyholds, the lord of the manor (where a lease cannot be made without his consent), must all consent to

the lease and join in the deed. The covenants to be contained in the lease are expressly laid down by the Act, and include covenants for insurance and repairs. The parsonage house and offices and ten acres of glebe situate most conveniently for occupation cannot be leased. If there are not ten acres of glebe within five miles of the parsonage, or of the church where there is no parsonage, the whole of the land within that distance must be reserved.

The parsonage house or residence and buildings may, however, be let under an agreement, provided a license for new residence, where necessary, is obtained; but if any spiritual person may be required by order of the bishop of the diocese to reside in the parsonage house or residence, or if it may be assigned by the bishop as a residence for any curate, the agreement must be in writing and must contain a condition for avoiding the same, upon a copy of the order of the bishop being served upon the occupier. If these conditions are not complied with the agreement is null and void. (1 & 2 Vict. c. 106, s. 59.) The glebe lands may also be let by the incumbent with the consent of the Ecclesiastical Commissioners and the patron, and if they are of copyhold tenure of the lord of the manor, for terms not exceeding ninety-nine years for a building lease, or sixty years for a mining lease, or leases of water courses, way-leaves, railroads, and other like easements. (5 & 6 Vict. c. 108, ss. 1, 4, 6; 21 & 22 Vict. c. 57.) The widow of any spiritual person holding any benefice to which a house of residence is annexed, and in which he was residing at the time of his death, is entitled to occupy such house—and the curtilage and garden belonging to it—for any period not exceeding two calendar months after her husband's decease. (1 & 2 Vict. c. 106, s. 36; Eustace Smith's Summary of Ecclesiastical Law, 61—63; 57—60.)

40. *Within what general limits would a contract entered into by churchwardens be held binding upon the parishioners and subsequent churchwardens?*

“Churchwardens cannot, strictly speaking, be considered as a corporation; for they cannot, except by custom, as in London, or by their particular charter, as at Wallingford, or when authorised by statute, purchase lands or take by grant. But they are a cor-

poration or *quasi* corporation for certain purposes, and it is said that as the parson of the church is a corporation for the taking lands for the use and benefit of the church, and is not capable of taking goods or personalty (1 Black. Com. 393 ; 1 Hagg. 173) in that behalf, so the churchwardens are a corporation to take money or goods or other personal estates for the use of the church, but are not enabled to take lands. But even with respect to the personal property which they are capable of purchasing or taking in succession for the use of the parishioners, they are little else than a name to sue by, and in all actions, &c., by them it must be laid *ad damnum parochianorum*. (Viner's Abr. title Churchwardens.) In this manner, however, they may sue for the goods of the church, and bring an action of trespass for them, and this whether against the parson or a parishioner, and whether for goods taken in the name of their predecessors or in their own time. (See Roger's E. L., Churchwardens.) But although they may thus take goods, yet as they are a *quasi* corporation for the benefit and not for the prejudice of the parish, they cannot dispose of any of the church goods without the consent of the majority of the parishioners, legally declared in vestry, and the license of the ordinary. (Prideaux, 135 ; Ayl. Parer, 171.) The parishioners are in fact the owners, the churchwardens being temporarily entrusted by them with the custody, so that if the churchwardens should dispose of them, the parishioners would have no remedy to recover them, for it would be as if they had themselves parted with the goods. That churchwardens are a corporation so as to bind their successors and the parishioners whom they represent in matters beneficial to the church and parish is well exemplified by the rather singular case of the parish of Hammersmith, where the wife of the incumbent, Dr. Martin, having been annoyed by the ringing of the five o'clock bell, and being about to remove in consequence, it was agreed between him and the churchwardens that the former should at his own expense build a cupola and erect a clock and new bell ; in consideration of his doing which the ringing of the five o'clock bell should cease during the lifetime of himself and wife. Some years afterwards, however, and after the cupola had been erected, the bell was again rung by order of the churchwardens ; but Dr. Martin obtained an injunction from the Court of Chancery. (*Martin v. Nutkin*, 2 P. Wms. 267.) It appears, however, from

the judgment that in granting this injunction the Court was much influenced by the fact that what had been done was on the whole beneficial to the parish, and as such a matter must always be open to doubt, it is suggested that it would be very unsafe to deal with churchwardens in a similar manner, for if the agreement could not be clearly proved to be beneficial to the parish, it rather appears that it could not be supported." (The Laws of the Church and Clergy, by H. W. Cripps, Q.C., 5th ed., 196, 197.)



## APPENDIX B.

---

### QUESTIONS SET IN THE HONOURS EXAMINATION IN APRIL, 1883.

---

#### I. PRELIMINARY.

What is now your age?

Where and with whom are you serving your clerkship?

---

#### 2. PRINCIPLES OF THE LAW OF REAL AND PERSONAL PROPERTY AND THE PRACTICE OF CONVEYANCING.

1. Land is conveyed by deed to the use of A. for life on condition that he do not marry B., with remainder to C. A. marries B. Who is entitled to the land? Would the result be the same if a similar settlement were made by will? Give the grounds of your answer?

2. By what statutes is the limitation of actions for the recovery of real property now governed, and what were the principal changes in the law effected by such statutes, respectively?

3. By post-nuptial settlement real estate is limited to uses in strict settlement, power being reserved to the settlor to revoke the uses and resettle the estate. The settlor subsequently conveys the estate by way of mortgage, the proviso for redemption providing for the reconveyance to himself in fee. Upon whom will the equity of redemption devolve upon the death of the settlor? State the grounds of, and any authority for, your answer.

4. A tenant in tail contracts in writing to sell the fee simple of the entailed lands, but dies before completion. What effect has the contract on the remainderman?

5. A testator bequeaths his residuary personal estate to trustees, to be laid out by them in the purchase of land, which he directs them to settle to the use of his nephew for life, with remainders in favour of his (the nephew's) issue in tail. After the purchase of the land the nephew dies without issue. Who is entitled to the land?

6. What is the effect of the following bequests:—(a) £1000 to children of A., B., and C.; (b) £1000 to children of A., B., and C., with a gift over of the share of any child dying under twenty-one to his brothers and sisters; (c) £1000 to A. and B. as tenants in common for their lives, and after their deaths to their issue; (d) £1000 to A. and B. for life, and on the death of the survivor to the children of A. and B.?

7. A married woman wishes to dispose of her reversionary interests expectant on her mother's death in the residuary personal estate bequeathed by the will of her grandfather who died in 1855, and in a sum of money bequeathed by the will of her father dated in 1878. In what way can she do this? Does the Married Women's Property Act, 1882, affect your answer to this question?

8. A sum of money is bequeathed to trustees upon trust to apply the same in payment off of a debt due by a charitable institution. The debt is partly secured by a mortgage of certain land held by the charity, partly by an equitable deposit of the title deeds of other land of the charity, and the remainder is unsecured. The money is sufficient to pay off the entire debt. Is the bequest good?

9. What is the effect of a limitation to the next of kin of a married woman under the statute if she had died "intestate and unmarried," or "intestate and without having been married," or "intestate and without ever having been married," where the married woman dies leaving a husband, children, and other relatives?

10. What is the rule governing the right of a solicitor to a lien on documents in his possession? Can the mortgagee's solicitor claim a lien on the title deeds after the mortgagee has been paid off and before reconveyance, or where the property has been sold subject to the mortgage, in respect of the costs of the mortgage payable by the mortgagors?

---

**3. THE PRINCIPLES OF LAW AND PROCEDURE IN MATTERS  
USUALLY DETERMINED OR ADMINISTERED IN THE  
CHANCERY DIVISION OF THE HIGH COURT OF JUSTICE.**

11. Explain the meaning of equitable execution. What is the general nature of a debenture, and to what rights are the holders of debentures entitled?

12. State the distinction existing between seeking and resisting specific performance as to admission of evidence of parol variations, and explain the grounds of it. By a written agreement the plaintiff agrees to sell and the defendant to buy a certain estate, and the plaintiff agrees to buy and the defendant to sell another estate, the two stipulations not being expressed to be dependent on each other. In an action by the plaintiff for specific performance of the first stipulation, it appears that the defendant cannot make a title to the second estate, and he alleges that an exchange was intended. Is the plaintiff entitled to succeed?

13. What is the rule applied to residuary bequests of personal estate to be enjoyed by several persons in succession; and in what class of cases is it excluded? A testator entitled to a reversion expectant on lives directs a conversion and investment of his personal estate, with a discretion to his trustees as to time, and the trustees decline to sell the reversion till it falls into possession. To what is the tenant for life entitled?

14. Will an injunction be granted under any, and if so, what circumstances to restrain the breach of an agreement of which the Court will not decree specific performance: for instance, a contract to act at a certain theatre?



15. What is the effect on a surety of the creditor giving time to the principal debtor, but reserving a right to proceed against the surety, (1) where the surety is informed of the arrangement; (2) where he is not? Can parol evidence of such reservation be given?

16. To what extent will the Court enforce equities respecting a trust over lands situate abroad, and what is the ground of any such jurisdiction? Can an action be maintained for foreclosure of a mortgage on lands abroad?

17. An action is brought to set aside a lease on the ground that the lessor, since deceased, was at the time of granting the lease affected by delusions. What must be proved in order to succeed in, or to defend such action, and on whom does the burden of proof rest? Is the rule the same as in the case of testamentary dispositions?

18. What is a petition of right? By what statute is the subject now regulated, and what is briefly the procedure? How are the costs dealt with?

19. State the rule as to application of the property of a partnership and of the partners in the winding-up of an insolvent partnership. A. and B., partners, induce C. to accept bills, fraudulently representing them as drawn to meet purchases of goods on the joint account of the firm and C. On the bankruptcy of A. and B. to what rights is C. entitled?

20. Explain the meaning of the term "promoter of a public company," and the manner in which its fiduciary relation to the company arises. When a promoter has sold a property to the company at a profit, what are the respective rights of the company and such promoter?

---

**4. THE PRINCIPLES OF LAW AND PROCEDURE IN MATTERS USUALLY DETERMINED OR ADMINISTERED IN THE QUEEN'S BENCH DIVISION OF THE HIGH COURT OF JUSTICE AND THE LAW AND PRACTICE OF BANKRUPTCY.**

21. Goods sold by A., of London, to B., of Singapore. Re-sale of goods "to arrive" by B. to sub-purchaser. Subsequent bankruptcy of B. before he receives the purchase-money. After re-sale A. gives

notice to stop *in transitu*. Assuming sub-purchaser has not paid B., is A. entitled to intercept to the extent of his own unpaid purchase-money so much of the sub-purchaser's purchase-money as remains unpaid by him, or does it belong to B.'s trustee? Refer, if you can, to any case on the subject.

22. Give an explanation of the term "*del credere*" agent. Is he answerable in the first instance to his principal? Does this particular agency amount to a promise to answer for the debt or default of another, so as to come within the fourth section of the Statute of Frauds, which requires such promise to be in writing?

23. Give your opinion on the following case, first, as to whether, under the circumstances, defendant will be permitted to give evidence to vary the written contract; and, secondly, upon what calculation the plaintiff is entitled to recover:—Action for freight. Bill of lading is for 100 lasts of wheat upon which freight is to be paid at £15 per last. Bill of lading bears date Dantzig. No evidence of wheat having been measured there in order to ascertain number of lasts, but there is evidence that a Dantzig last is much larger than an English one, by which latter defendant has purchased. Plaintiff contends he is entitled to charge freight on 100 lasts according to the bill of lading. The defendant, on the other hand, contends that he is only liable to pay freight on such reduced number of lasts as the whole cargo would amount to if measured by the Dantzig scale.

24. In what cases, and under what statute, is a tender of payment in coin declared to be legal? Is a tender of a larger sum than is due, with a demand for change, a good tender? Will a tender to an executor before he has proved the will be a good one?

25. A ship is insured with one set of underwriters and the freight with another; a constructive total loss on ship takes place. Assured abandons to both sets of underwriters, and the ship, after abandonment made and accepted by both underwriters, arrives at her port of destination earning freight. Which set of underwriters is entitled to have the benefit of the freight so earned? Give reasons and refer to any case on the subject.

26. B. and C. occupy adjoining lands under the same landlord. B. by the terms of the lease is bound to keep the land in his occupation fenced. The land had been fenced with wire rope by B.'s predecessors. B. had from time to time repaired it, but from long exposure some of the wire composing the rope decayed, and a piece of it falls over on C.'s ground and lies hidden in the grass. A horse belonging to C. whilst grazing swallows it, and dies in consequence. Is B. liable for the loss of the horse? Give reasons.

27. Writ of summons specially endorsed and appearance by defendant. Plaintiff applies for judgment under Order XIV. Leave given to defend on payment into Court of amount claimed; money paid in and action referred to arbitration; afterwards, and before award made, defendant becomes bankrupt, and his trustee obtains an order restraining further proceedings in the action. Is, or is not the plaintiff a secured creditor? If so, what step should be taken to ascertain the amount due to him?

28. In what cases can a defendant remove an action, first, from the County Court to the High Court, and secondly, from the High Court to the County Court? State the practice, and refer to the several statutes affecting this question.

29. B. buys of F. a horse warranted to be a good worker, upon the condition that if the horse does not answer the warranty, the buyer shall return him to the seller within a given time. The buyer does not do so, but brings an action against F. upon the warranty. Can he maintain it? Give reasons.

30. The owner of a parcel of silks over the value of £10, but value undeclared, delivers it to B. and Co., carriers for hire, to be carried from London to New York. By B. and Co.'s negligence the goods were shipped on board a vessel bound to Calcutta, where they arrive. After some time they are restored to the owner, who had been obliged to replace them at enhanced prices. Is the owner entitled to recover from the carriers damages either for the temporary loss of the articles, or in respect of the consequences of the loss, namely, the amount paid for the difference in price? Give reasons.

5. THE PRINCIPLES OF LAW AND PROCEDURE IN MATTERS  
USUALLY DETERMINED OR ADMINISTERED IN THE PROBATE,  
DIVORCE AND ADMIRALTY DIVISION OF THE  
HIGH COURT OF JUSTICE, ECCLESIASTICAL AND CRIMINAL  
LAW AND PRACTICE, AND PROCEEDINGS BEFORE JUSTICES  
OF THE PEACE.

31. An American citizen serving on board a British ship causes the death of another American citizen serving on board the same ship in circumstances amounting to manslaughter. This ship is at the time in a river within French territory at a place below bridges, where the tide ebbs and flows, and great ships are navigated. Is there any jurisdiction to try the offender in this country? Explain the principles which govern your answers.

32. Define the offence of embezzlement, and point out the technical distinction between this and other kinds of theft.

33. What powers have been vested by statute in Courts of Summary Jurisdiction for facilitating the payment of money penalties imposed by them, and what reservation attaches to one of the powers so given?

34. A testator makes at different dates two wills. The latter will does not in terms revoke, nor does it dispose of all the property bequeathed by the earlier will. By what considerations will the Court be guided in determining whether or not the earlier will is wholly revoked? Would parol evidence of intention be admissible in such a case?

35. When, at what stage of the proceedings, and with what result may an heir-at-law or devisee of real estate be cited in the Probate Division?

36. What requisites of time and circumstances are essential to constitute desertion a ground for judicial separation? Illustrate your answer by an affirmative and negative example.

37. State concisely the alterations effected in the law by the "Matrimonial Causes Act, 1878" (41 & 42 Vict. c. 19).

38. Explain the nature, extent, and incidents of the Admiralty jurisdiction relative to disputes between joint owners as to the employment of a ship.

39. In what, if any, circumstances will the owner of a ship be liable for injury occasioned by the negligence or want of skill of a pilot employed by him ?

40. What restrictions have been imposed by statute upon the ability of persons holding spiritual preferment to engage in trade ? A contract is entered into by a beneficed clergyman in violation of the restriction mentioned in the first part of your answer. What will be the result as to the validity of the contract, and how, if at all, would such result be affected by the circumstance that the person with whom the contract was made was aware that the other contracting party was a beneficed clergyman ?

# INDEX.

---

- ABATEMENT OF LEGACIES, 95
- ACCEPTANCE OF RICE, contract for, measure of damages, 49
  - RENT, effect of, 84
- ACCESSORY before the fact, 255
  - after the fact, 254, 255
- ACCOMMODATION BILL, proof in case of, 17
- ACCOMPLICE, evidence of an, 265
- ACCUMULATE legacies, effect of trust to, 92
- ACKNOWLEDGED DEED, effect of, 66
- ACKNOWLEDGMENT by married woman, not now required, 141
- ACT OF GOD, legal meaning of term, 134
- ACT OF PARLIAMENT, conversion by, 46
- ACTION in respect of married woman's estate, 72, 73
  - on a patent, special procedure, 148
  - for dissolution of partnership, steps in, 346
- ACTIONS, limitations of, 101
- ADDITIONAL SECURITY, its effect, 188
- ADEMPTION, 196
- ADMINISTRATION of assets, 1, 3, 21, 144, 169, 171, 345
  - ACTION by creditor, 169
  - DECREE, contents of, 171
  - under s. 73 of Probate Act, 1857,...284—5
  - granted to a creditor, 286
- ADMINISTRATORS AND EXECUTORS, 59, 60
- ADMIRALTY, 300, 365, 368
- ADMISSION of tenant for life of copyholds, 47

- ADVANCE of money, when partnership created thereby, 146  
ADVANCEMENT by purchase in name of child or wife, 227—8  
ADVERSE course to adopt on own witness proving, 167  
ADVOWSONS, 315  
ADULTERY, divorce on ground of, 289  
— evidence as to, 295  
AGENCY of wife to bind husband, 79  
AGENT AND PRINCIPAL, 182—6  
— NOT PARTNER, though sharing profits, 147  
AGENT's fraudulent representation, 122  
AGREEMENT, with parol variation, 209  
AGREEMENTS, FAMILY, 61  
AGREEMENT TO SELL a ship binding, 305  
— for salvage, 365  
AIR, OBSTRUCTION TO, 137  
ALIENATION of property to go over on, 205  
ALTERATION OF DATE of cheque, 26  
— SCOPE of registered company, 27  
ANNUITANT-VENDOR, no partnership though profits shared, 147  
ANNUITIES, 198, 237  
ANTE-DATING a deed, effect of, 261  
ANTICIPATION, effect of restraint on, 67, 70, 75  
APPEARANCE conditional, not necessary, 164—5  
APPLICATION of purchase-money, 239  
APPOINTMENTS, CONTRACTS in relation to public, 40  
— which are illusory, 153  
APPOINTMENT of new trustees, 218  
APOLOGY for libel, 262  
APPRENTICE, bankruptcy of master, 352  
APPROPRIATION of payments, 6, 7, 354  
ARBITRATION, 167, 354  
ARCHITECT'S POWERS under builder's contract, 16  
ARRANGEMENTS, FAMILY, 61  
ARTICLED CLERK, bankruptcy of master, 353  
ARTICLES of the Church, construction of, 312  
ASSESSMENT of damages, how made, 49  
ASSETS, ADMINISTRATION of, 1  
— MARSHALLING of, 4  
ASSIGNMENT OF POLICY, order and disposition, 13  
— MARINE insurance, 117

- ASSOCIATION, ARTICLES OF, alteration of, 27  
     — not registered when wound up by Court, 33
- ATTACHMENT, writ of, 177
- ATTEMPT to commit a crime, 255
- ATTESTATION of a will, 242
- ATTORNEYMENT CLAUSE in a mortgage, 123, 128
- AUCTION, trustees' sale by, and private contract, 216
- AUCTIONEER making verbal declarations, 233
- AUCTIONEER'S AUTHORITY to bind vendor—trustees when one is a married woman, 233
- AUTHORITY, paramount conversion by, 46  
     — OF BROKER to bind principal, 42
- AUTREFOIS ACQUIT, 267  
     — CONVICT, 267
- AVERAGE, general and particular, 117
- AWARD, when set aside and published, 354
- 
- BAD CHARACTER, evidence of, 167
- BAILMENT, 133
- BANKERS' BOOK Evidence Act, 1879,...166  
     — LIABILITY on paying a cheque with forged indorsement, 25
- BANKERS, PAYMENT to, as agent, 349
- BANK OF ENGLAND NOTE, alteration of date of, 26
- BANKRUPTCY, 8—16, 379, 380  
     — OF ACCEPTOR, drawer, or indorsee, proof in event of, 17  
     — OF LESSEE, and disclaimer of lease, 88, 90  
     — OF MASTER of apprentice, 353  
     — OF TRADER, effect on lender of money or vendor of goodwill, 147—148  
     — PROOF under, 198  
     — LAWS, fraud on, 205  
     — LIMITATION for estate to go over on, 205  
     — OF PURCHASER before goods delivered, 241
- BANKRUPTCIES, SEARCHES for, 237
- BARRING ENTAILS, 57
- BEANS, injury to, by collision, 112
- BEQUESTS, EXECUTORY, 60



- REQUESTS OF LEASES** where lessee has option to purchase freehold, 45  
**BEYOND THE SEAS**, 101—102  
**BILL OF EXCHANGE** of bankrupt, effect of, 13  
     — and promissory note, 17, 18  
**BILL OF LADING**, 379  
     — effect of certain clauses in, 113  
     — effect of retaining, 116  
     — when its clauses apply, 113  
**BILL OF SALE** taken by surety, 188  
**BILLS OF SALE**, 18, 19  
     — builder's contract if a, 16  
     — ACTS, registration under, 16  
**BOND** executed by principal and surety, 186  
     — to secure a child's appointed share, 156  
     — of bankrupt for debt proveable under his bankruptcy, 13  
     — effect of married woman joining in her husband's, 68  
**BOROUGH ENGLISH**, 325  
**BOUGHT AND SOLD** note of a broker, 42  
**BOVILL'S ACT** (partnership), 146  
**BREACH OF CONTRACT**, when a crime, 256  
     — to supply a machine, 42  
**BREACH OF TRUST**, liability of trustees, 217  
     — concurred in by a married woman, 75  
**BROKERS**, 182  
**BROKER, SALE** of goods through a, 42  
**BUILDER'S CONTRACT**, bankruptcy of builder, 16  
**BUSINESS**, carrying on, by executors, 59  
  
**CAB PROPRIETORS**, when liable for negligence, 105  
**CARGO**, master's duty as to, after collision, 112  
     — of SHIP, damage to, 113  
**CARRIERS**, 19, 21  
     — of GOODS, negligence of, 380  
     — of PASSENGERS, liabilities of, 131  
**CASH** paid for shares when not required, 32  
**CAVEAT EMPTOR**, 43  
**CERTIORARI**, writ of, 178, 267  
**CESTUIS QUE TRUSTENT** remedy against trustees never statute barred, 226

- CHANCERY DIVISION, matters specially assigned to, 163
- CHARACTERISTICS of prescription, 178—179
- CHARITABLE bequest to pay off a mortgage debt, 376
- CHARITIES, 21—25
- CHARTER-PARTY, clause in, as to negligent stowage, 111
- CHEQUES, 25, 26
  - drawn in a false name, 260
- CHILD, ADVANCEMENT by purchase in name of, 227, 228
  - OR WIDOW of deceased partner does not become liable because annuity paid, 147
- CHILDREN, legacies to, as a class, 96
- CHOSE IN ACTION of wife, 74—75
- CHURCH DISCIPLINE ACT, 1840,...318—319
- CHURCHWARDENS, contract of, 372
- CIVIL AND CRIMINAL ecclesiastical cases, 316
- CLASS, LANDS given to a, 327
  - LEGACIES given to a, 96, 327
- CLAYTON'S CASE, 7
- CLUB, who liable for goods supplied to, 183
- CODICIL OF WILL, when probate granted of, 283
- CO-HEIRESS as party to partition deed, 141
- COLLISION injury to cargo by, duty of master, 112
  - of ships, 303
- COMMON carrier by sea of goods, 19
  - Law Procedure Acts, 167—177
  - nuisance, 136
- COMPANIES, 27—37
  - as distinguished from partnerships, 142
- COMPANY, repudiating shares in, 346
- COMPROMISES, family, 61
  - in Divorce Court, 293
- COMPULSION, effect on a crime, 251
  - when an excuse for criminal act, 259
- COMPULSORY winding-up of companies, 33
- CONDITIONAL APPEARANCE, 164, 165
- CONDITIONS, 38—40
  - OF SALE, 231, 232, 321
- CONDONATION effected by separation deed, 198
  - in divorce cases, 291
- CONSOLIDATION, doctrine of, 124, 126

- CONSPIRACY to commit a crime, 255
- CONSTRUCTION OF WILLS, 244, 247, 248
- CONSTRUCTIVE NOTICE, 135
  - TRUSTS, 225
  - TOTAL LOSS, 119
- CONTINGENT DEBT, proof in bankruptcy, 15
  - POWER of appointment, 161
  - REMAINDERS, 190, 193
- CONTRACTS, 41, 44, 48, 379
- CONTRACT, breach of, when a crime, 256
  - effect of vendor's inability to pay on, 12
  - of tenant in tail to sell fee, 376
  - of married woman, when her estate bound by, 68
  - PARTNERSHIP, always joint, 144
  - sale by trustees by private, 216
  - to sell a long lease, title required, 234
  - to sell goods, 240
  - to speculate on Stock Exchange, 184, 185
  - to take shares in a limited company, 31, 32
  - trading, by a clergyman, 382
- CONTRACTOR or employer, who is liable, and when, 132, 133, 135
- CONTRIBUTION against a person not party to action, 168, 169
  - OF DAMAGES against co-defendant, 49
- CONTRIBUTORIES, list of, in winding-up, 36, 37, 143
- CONTRIBUTORY NEGLIGENCE, 130, 132
- CONVERSION, 44—47
  - ACTION for, by trustee in bankruptcy, 241
  - PARTIAL, failure of objects of, 228, 229
- CONVEYANCE by married woman under old law, when husband an infant, 73
  - in favour of scheduled creditors, 230
- CONVEYANCING and Law of Property Act, 1881. *See* TABLE OF STATUTES.
  - ACT, 1882. *See* TABLE OF STATUTES.
- COPARCENERS, 82, 83
- COPYHOLDS, 47
- CORPORATIONS, 142, 143
- "Costs, freight and insurance," meaning of, 115
  - of and in administration actions, 169, 170, 171
  - of Queen's Proctor, 298
  - principle of taxation where claim and counterclaim, 172

- COTTON TRADE, custom as to brokers, 183
- COUNTERCLAIM against assignee of policy of insurance, 118
- AND CLAIM, principle of taxation, 172
  - for specific performance of agreement, with parol variation, 209
- COUNTY COURT, removal to and from, 380
- COVENANT IN LEASE broken, how affected by taking rent, 84
- breach of, in lease, 352
  - broken in tenant for life's lease, 87
  - TO REPAIR, if enforceable, mortgagee of reversion of lease, 123
- CREDIBILITY of witness, impeaching, 166
- CREDITOR OF COMPANY having obtained judgment or execution against a company, 32
- LETTERS OF ADMINISTRATION, when and how granted to, 286, 287
- CREDITORS' ADMINISTRATION action, 169
- MARSHALLING as between, 4
  - CONVEYANCE upon trust for, 229
- CRIME OR CRIMINAL OFFENCE, when an act not, 251, 252, 253, 255
- how affected by insanity, 356
- CRIMINAL LAW, 251
- AND CIVIL ecclesiastical cases, 316
- CROWN DEBTS, 237
- CUSTOM distinguished from prescription, 178, 179
- OF TRADE, 48
- CUSTOMARY RIGHT to a profit *à prendre*, 79
- 
- DAMAGES, 48, 49
- against respondent in Divorce Court, 295
  - how assessed in action for trespass, 49
  - measure of, on breach of contract, 42, 48
- DAMAGE TO SURFACE when time runs, 103
- TO CARGO, 113
- DAMNUM sine injuria oritur actio, 39, 40
- DATE OF CHEQUE and bank note, alteration of, respectively, 26
- DEATH OF OWNER of land converted by Act of Parliament, 46
- SOLE TRUSTEE upon whom legal estate devolves on, 219—220
- DEBENTURE HOLDER's rights, 377
- DEBT, payment of balance after close of, 11

- DEBTOR'S SUMMONS, effect of tender of debt, 8
- DEBTS, ORDER of liability of assets to pay, 1
- of married women, 71
- DECEIT, action for, 63, 121
- DECLARATION in appointments *ultra vires*, 155
- under Conveyancing Act having effect of vesting property in newly appointed trustees, 219
  - of Title Act, 188
- DECREE IN PARTNERSHIP action, form of, 145
- DEED OF PARTITION, instance of, 141
- RELEASE, 189
  - SEPARATION, 197
- DEED, POWER exercisable by, executed by will, 152
- DEEDS, effect of non-delivery on completion of purchase, 235
- ordered to be given up against purchaser, 239
- DEFECTIVE execution of powers remedied, 152
- DEFENCE in Divorce Court, 365
- to claim and payment into Court, 168
- DEFENCES at criminal trial, 266
- DEL CREDERE agent, 379
- DELIVERY, writ of, 176—177
- DEMONSTRATIVE legatees, 91
- DESCENT, how traced, 81, 82, 83, 323
- special customs of, 325
- DEVISE, construction of, 246
- *cum onere* (Locke King's Act), 127
  - of real estate, how proved, 355
  - to heir he takes as purchaser, 80—81
- DEVOLUTIONS of legacy on death of legatee, 93—96
- DIE without issue in a will, 313—327
- DILAPIDATIONS, 87
- Act, 1871 (Ecclesiastical), 313
  - of church, 368, 369
- DISABILITY, election of persons under, 56
- DISCHARGE of bankrupt, its effect on after acquired property, 10
- DISCLAIMER of lease, 88—90
- of trusts of will, 215
- DISCONTINUANCE, 50
- DISCOVERY of fraud generally, when time runs, 103, 227
- DISHONOUR, service of notice of, 17

- DISPOSITION, voluntary, and settlements, 202
- DISSOLUTION of partnership, 345
- DISTRIBUTION, Statutes of, 50, 51
- DIVIDENDS on debt payable on a contingency, 15
- DIVINE SERVICE, performance of, 312
- DIVORCE, 287—300, 365
- DOCUMENTS incorporated in a will, 284
- DOMICILE, 289, 330
- DONATIONES MORTIS CAUSÆ, 51, 52
- DOWER, 52—54
- DRAWER'S BANKRUPTCY, notice of dishonour in the event of, 17
- DRUNKENNESS, effect on a crime, 252
- DUTY, SUCCESSION, 212
- DYING DECLARATIONS as evidence, 266
  
- ECCLESIASTICAL LAW, 310—320
- ELECTION, 54, 57
- ELEGIT, writ of, 173
  - ESTATES held by, superseded, how, 173
- EMPLOYER, when liable as well as contractor, 132, 133, 135
- EMPLOYER'S POSITION on builder's bankruptcy, 16
  - LIABILITY for fellow servants' acts, 105—109
  - — Act, 1880,...106
- EMBEZZLEMENT, 270, 381
- ENFRANCHISEMENT, conditions of sale on an, 232
- ENGAGEMENT pending settlement by intended wife, 76
- ENGAGEMENTS AND DEBTS of married woman, 66—79
- EQUITABLE EXECUTION, 175
  - LIEN on partnership dissolution, 100
  - MORTGAGE, 122
- EQUITY favours gifts to charities, 23
  - TO A SETTLEMENT, 77
- ESTATE of incumbent, 368
  - as distinguished from a power, 213
  - DISCONTINUANCE of, 50
- ESTATES BY STATUTE merchant, statute staple, and elegit, 173
  - TAIL, 57—58
- EVIDENCE, dying declarations as, 266
  - BY ENTRIES in the books of a banker, 165

- EXCESSIVE** execution of a power, 156  
**EXCHANGE** of livings, effect as to past dilapidations, 313  
**EXECUTION BY ELEGIT** and *fi. fa.* respectively, 173  
     — delivery of property other than land, 176  
     — **EQUITABLE**, 175, 377  
     — issued against company prior to winding-up, 32  
     — of powers, defects received against, 152  
     — **OF WILLS**, 242  
     — on assets of company, how altered by Judicature Acts, 35  
**EXECUTOR**, 345, 351.  
     — **AND TRUSTEE**, disclaimer by, 215  
     — effect of legatee's husband being, 94—95  
     — effect of appointing debtor, 205  
     — judgment against priority obtained thereby, 345  
**EXECUTORS**, administrators and assigns, 94  
     — and administrators, 55, 334  
     — implied power to sell lands, 334  
**EXECUTORY** and executed trusts, 222  
     — **BEQUESTS**, 60  
**EXPRESSIONS**, technical, 212  
**EXPRESSUM** facit cessare tacitum, 109—113  
**EXPRESS TRUSTS**, 224—226

- FACTORS**, 182  
**FAILURE** partial, of objects of conversion, 228  
**FALSE REPRESENTATIONS**, action for deceit or, 121  
     — **PRETENCES**, 361  
**FAMILY ARRANGEMENTS**, rules as to, 111  
     — **COMPROMISES**, 61  
**FEAR** of excessive harm, 251  
**FENCE**, neighbour's animal killed through defect of, 380  
**FIERI FACIAS**, disadvantages of, 173  
**FINE** under Summary Jurisdiction Act, 1879,...269  
**FIRE** happening after goods delivered to railway company, 20  
**FORCE** used in obedience to a superior's command, 252  
**FORECLOSURES**, 339  
**FOREIGN BILLS**, steps to be taken on dishonour of, 18  
     — **JUDGMENT** in Admiralty, if enforceable, 308

- FOREIGN** principal, liability of agent here, 186  
**FORFEITURES AND PENALTIES**, 149  
**FORFEITURE OF LEASE**, 352  
**FORGED INDORSEMENT** on cheque, 25  
**FORGERY**, 260, 261  
**FRATRIS POSSESSIO**, doctrine of, 83  
**FRAUD**, 62, 63
  - CLAIM founded on, rule in *Clayton's case*, 7
  - DISCOVERY of, when time runs, 103, 227
  - MARRIED WOMAN'S, 62—70
  - upon a power, 154**FRAUDS, STATUTE OF**, 4th sec., 64, 65  
**FRAUDULENT REPRESENTATION** of an agent, 122  
**FREIGHT AND SHIP**, mortgages of, 305
  - who entitled to, 379**FREERENCH**, 52  
**FUNERAL EXPENSES**, who liable for, 351
- GARNISHEE ORDER**, effect of, as against trustee in bankruptcy, 10  
**GAS**, breach of contract to supply, a crime, 257  
**GAVELKIND LANDS**, 83, 325  
**GENERAL AND PARTICULAR** average, 117
  - LEGACIES, 91, 95
  - POWER of appointment, 151, 157, 162**GIFT BY DEED** of lands, 326  
**GIFTS**, effect of equity rules on, 205
  - upon conditions precedent and subsequent in respect of marriage 38**GLEBE LANDS**, lease of, 370  
**GOODWILL**, sale of, liability of vendor as partner, 147  
**GOODS, ACCEPTANCE OF**, wanting, 43
  - DELIVERY of, in execution, 176
  - SALE in market overt, 240
  - SUPPLIED to a club, 183**GRANDCHILDREN**, how benefited by exercise of power, 332  
**GRASS, CONTRACT** for sale of crop of, 41  
**GUARANTEE**, 64—65  
**GUARDIAN AND WARD**, 65



- HALF-BLOOD ISSUE**, when they inherit, 81  
**HANGING A CRIMINAL**, 252  
**HAY** destroyed by fire, 352  
**HEIR**, on devise to, he takes as purchaser, 80, 81  
**HEIR-AT-LAW**, how affected by failure of objects of conversion, 228  
     — when cited to see probate, 381  
**HEMP**, sale of Manilla, 43  
**HEREDITAMENTS, INCORPOREAL** 79  
**HOUSES**, lateral support of adjoining, 135  
**HUSBAND AND WIFE**, 52, 54, 66. *And see DOWER.*  
     — **AS WITNESSES**, 295  
**HUSBAND'S LIABILITY** where wife is a shareholder, 36  
**HYPOTHECATION OF SHIP** or cargo for repairs, 305
- IGNORANCE**, effect on an offence, 251  
**IGNORANTIA JURIS NON EXCUSAT**, 110  
**ILLEGAL CONTRACTS** at common law, 40  
**ILLUSORY APPOINTMENT**, 153  
**IMPLIED TRUST**, 225  
**IMPRISONMENT** under Summary Jurisdiction Act, 1879,...269  
**IMPROVEMENT OF LAND ACT**, 1864,...200  
**INCITEMENT TO COMMIT** a crime, 255  
**INCORPOREAL HEREDITAMENTS**, 7  
**INCUMBENT'S ESTATE**, 368  
**INCUMBERING, LIFE ESTATE** which goes over on, 205  
**INDEMNITY AND CONTRIBUTION** from a person not a party to an action, 168, 169  
**INDORSEMENT ON WRIT** in administration action at creditor's suit, 169, 170  
     — blank and special, 354  
     — **FORGED** on a cheque, 25  
**INFANCY**, defence of, to an offence committed, 251  
**INFANT HUSBAND**, conveyance by his wife of her realty in case of, 73  
**INFANT'S DEBT**, as to adjudication thereon, 9  
     — **LIABILITY** as contributory, 36  
     — **MAINTENANCE**, 104  
     — **POWER** of appointment of guardian of, 65  
     — **RESPONSIBILITY** for fraud, 62

- INFLUENCE, UNDUE, 220**  
**INFRINGEMENT** of patent, special procedure in action for, 148  
**INHERITANCE, 80, 84, 212, 213**  
**INJUNCTION, 138, 176**  
     — granted in lieu of specific performance, 377  
**INJURIA sine damno actio oritur, 39—40**  
**INNOCENT** misrepresentation, effect of, 119  
     — persons, rule as to liability between, 182  
**INSANE DELUSIONS, effect on a will, 277**  
**INSANITY** as a defence to a crime, 251  
     — its effect on a crime, 356  
     — of respondent and petitioner in divorce cases, 289  
**INSOLVENCY OF PURCHASER, effect on contract, 12**  
     — of TRADER, effect on lender of money to and vendor of goodwill, 147  
**INSTALMENTS, payment by, effect of, 44**  
**INSURANCE OF SHIP, 379**  
**INTEREST ON LEGACIES, 92**  
     — on promissory note, 102  
**INTERLOCUTORY ORDERS, what are, 175**  
**INTERVENTION** in divorce cases, 297  
**INTESTACY, Statutes of Distribution on, 50, 51**  
**"INTESTATE and unmarried," meaning of, 158**  
**INVESTMENT** in business and profits made, how applied, 217  
**IRON, CONTRACT** for sale of, by instalments, 48
- JUDGMENT, Admiralty, foreign, if enforceable here, 308**  
     — against a company, 32  
     — in partnership action, form of, 145  
     — to assign leaseholds vested in tenant for life as trustee, contents of, 171—172  
**JUDGMENTS, &c., 236**  
**JUDICATURE ACTS, effect on proofs and executions against companies, 35**  
**JUDICIAL SEPARATION, petition for, 290, 381**  
**JURISDICTION** on High Seas of Admiralty Court, 304  
     — PLEA to the, in criminal cases, 266  
**JUS DISPONENDI, meaning of, 116**

**LAND AND HOUSES, lateral support to, 134**

- ACTION to recover, how mesne profits recovered though not claimed, 177
- legacies charged on, 92
- ORDER of liability of, for debts, 2
- REGISTRATION of title to, 188
- REGISTRY ACT, 1862,...188
- TRANSFER ACT, 1875,...188

**LANDLORD AND TENANT, 84—91****LARCENY, 257, 259, 270****LAPSE OF LEGACY, 93, 94****LATERAL SUPPORT of adjoining land and houses, 134****LEASE, AGREEMENT TO, when remaindermen bound, 208**

- FORFEITURE OF, for non-repair or non-payment of rent, 149
- how affected by mortgage of reversion, 123
- setting aside, invalid, 378
- TITLE required on sale of, 234
- with option to purchase freehold, 45

**LEASES, 86—91****LEASEHOLDS bequeathed with limitations, 60, 98****LEGACIES, 91**

- LIABILITIES to abatement for debts, 2
- MARSHALLING, as between, 4

**LEGACY to a married woman, 75**

- DUTY, 363

**LEGAL ESTATE, where it is under a will, 219****LEGATEE, how affected by Inheritance Act, 1833,...80****LEGITIMACY DECLARATION ACT, 1858,...299****LENDER to trader does not become partner, 146—147****LESSOR AND LESSEE, 84, 86, 352****LIBEL, 98**

- criminally and civilly considered, 262

**LICENCE, 213****LIENS, 99****LIGHT, obstruction to, 137****LIMITATION ACT, 1874, Real Property, 375**

- conditional, 193
- property to go over on bankruptcy, &c., 205
- to a man's own heirs, 222
- STATUTE OF, as regards trusts, 226

- LIMITATION OF ACTIONS**, 101—104
- LIMITED COMPANY'S** memorandum of association, 27
- LIQUIDATED DAMAGES**, proof for, 9
- LIQUIDATION**, discharge under, its effect as regards after-acquired property, 10
- LIS PENDENS**, 237
- LOCKE KING'S ACT** (17 & 18 Vict. c. 113), 127
- LOSS**, constructive total, 119
  - **OF GOODS**, effect upon assignment of assurance, 117
- LUNATIC**, vendor becoming, after conveyance defectively drawn and executed, 234
  
- MACHINE**, contract to supply a, 42
- MAINTENANCE** of infants, 104
- MANDAMUS**, writ of, 176
- MANSLAUGHTER** in French waters, 381
- MARINE ASSURANCE**, assignment of, 117
- MARITIME LIEN**, 300, 308
- MARKET OVERT**, purchase in, 240
- MARRIAGE ARTICLES** differing from settlement, 342
  - effect on a will, 243
  - **GIFTS** precedent and subsequent in respect of, 38
    - over on second, 38
  - restraint of, 375
  - **SETTLEMENT**, 342
  - when a part performance or contract, 210
- MARRIED WOMAN** as one of selling trustees, 233
  - as witness, 296
  - a tenant for life, 199
  - coercion of, 251
  - election of, 56
  - limitation to, as if intestate and unmarried, 376
  - reversionary interest of, 376
- MARRIED WOMAN'S** liability as contributory of a company, 36
  - **Property Act**, 1882,...66, 79, 141, 259, 339, 376.  
And see **TABLE OF STATUTES**.
  - power to dispose of realty when husband an infant, 73
  - responsibility for fraud, 62, 70

- MARRIED WOMAN'S will, 247, 280—281  
 — WOMEN, 66—71  
 MARSHALLING, 4, 126, 344  
 — ASSETS in favour of charities, when done, 23  
 MASTER AND SERVANT, 105—109  
 — OF SHIP'S liability for negligent stowage, 111  
 MASTER'S AUTHORITY to pledge ship, 305  
 MATRIMONIAL Causes Act, 1878,...381  
 MAXIMS, 109, 128, 210  
 MEASURE OF DAMAGES on breach of contract, 42, 48  
 — for non-acceptance of rice, 49  
 MEMBER OF UNLIMITED COMPANY who has sold his shares, 37  
 MEMORANDUM OF ASSOCIATION, alteration of, 27  
 MERCANTILE AGENTS, 182  
 — LAW, 111  
 MESNE PROFITS, judgment for, as well as the land, 177  
 MINING LEASE, 88  
 MISFORTUNE, effect on a crime, 251  
 MISREPRESENTATION, 119—122  
 MISTAKE IN CONTRACT, when specific performance decreed, 211  
 — maxim as to, 210  
 MISTAKEN over-payment, effect of, 183  
 MISTAKES in settlement, 342  
 MONEY PAID INTO COURT, how to keep it there, 168  
 "MONEY," meaning of, in a will, 248  
 MONITION to remove church ornaments, 318  
 MORTGAGE by a married woman of her property, 69  
 — by tenant for life, how power affected, 202  
 — exercising power so as to raise a, 159  
 MORTGAGEE, when a trustee for mortgagor, 225  
 — of shares of a company, 36  
 — joining to release dower, 54  
 MORTGAGEE'S RIGHTS against mortgagor's tenant, 123  
 MORTGAGES, 122—130, 305  
 — of ship and freight, 305  
 MORTMAIN ACTS, effect on bequests, 21  
 MUTUALITY, how far necessary, 211

- NECESSARIES, when they give a lien, 300
- NECESSITY, when an excuse for criminal misconduct, 259
- NEGLIGENCE, 130—133
- of a cab driver, 105
- NEGOTIABILITY of promissory note, 354
- NEIGHBOURING PROPRIETORS, 133—135
- NEW TRUSTEES, appointment of, 218
- "NEXT OF KIN" and "next of kin according to statute," meaning of, 50, 51
- " — of married woman under the statute as if she had died intestate and unmarried," meaning of, 158
- NON-ACCEPTANCE of rice contracted for, measure of damages, 49
- NON-DELIVERY OF CARGO, action for, 114
- NOTICE, 135
- OF TRIAL of an action, 165
  - OF DISHONOUR of a bill, 17
- NOVATION distinguished from *Clayton's case*, 7
- NUISANCE, 136
- NULLIUS FILIUS, will of testator who is a, 245
- 
- ORDER and disposition, assignment of policy, 13—14
- FOR ADMINISTRATION, contents of, 171
  - OF ATTACHMENT of claims against a ship, 308
  - to assign leaseholds vested in tenant for life as trustee, 171—172
- ORDERS, INTERLOCUTORY, what are, 175
- ORNAMENTS, removal of, in a church, 318
- OUTLINE OF AN ACTION, 162
- OVER-PAYMENT between brokers by mistake, 183
- OWN PROPERTY if settled till bankruptcy void, 205
- 
- PARDON in criminal cases as a defence, 267
- PATENT RIGHTS, 148
- PARTICIPATING POLICY-HOLDERS liable as contributories, when, 143
- PARTICULAR and general average, 117
- POWERS of appointment, 151
- PARTIES to administration action (partners), 144
- PARTITION, 138—141
- ACTS, 1868 and 1876,...139

PARTITION DEED, 141

PARTNERS, when survivor of, deemed a trustee, 226

PARTNERSHIP, 142—148

— DISSOLUTION, 345—346

— equitable lien on dissolution of, 100

— winding-up of insolvent, 378

PAST MEMBERS of a company, liability of, 36

PAYMENTS, appropriation of, 6, 354

PAYMENT of balance of debt after close of bankruptcy, 11

— of shares of limited company, 31, 32

— into Court, 99, 168

PERFORMANCE, 196

— SPECIFIC, 207, 336, 377

PERJURY, 261

PERSONAL ESTATE bequeathed to be enjoyed in succession, 97

PENALTIES AND FORFEITURES, 149

— in money, summary powers of, 381

PENALTY, proof in respect of, under a bankruptcy, 9

PERPETUITIES, rule against, when powers come within, 151, 157

PERSONALTY, LEGACIES payable out of, 92

— reversionary interest of married women in, 74

PETITION of right, 378

PEWS in a church, 314

PILOTAGE, compulsory, 302

PILOT, when owner liable for negligence of, 382

PLEAS in criminal cases, 266

POLICY-HOLDERS, how far partners, 142

POSSESSIO FRATRIS, doctrine of, and its object, 83

POSSESSION, action to recover, if maintainable after disclaimer of lease,

— of SHIP, action for, 306—307

POSSIBILITY, a bare, 213

POTATOES, contract for sale of crop of, 41

POWER in the nature of a trust, 150, 225

— distinguished from an estate, 213

— OF APPOINTMENT, 332

— will exercised under, 363

POWERS, 150, 162

— OF APPOINTMENT makes property subject thereto, liable for debts, 3

- POWER OF REVOCATION in settlement, 204
  - SALE by tenant for life, 324
  - — effect of mortgage upon, 202
  - — to pay debts, when implied, 334
  - TO REVOKE, uses of settlement, 375
- PRACTICE of the Supreme Court, 162, 178
- PRELIMINARY ACT, 367
- PRESCRIPTION, 178—181
  - ACT, 1832,...179
- PRESCRIPTIVE RIGHT to a profit *à prendre*, 79
- PRINCIPAL AND AGENT, 182—186, 349, 379
  - — how far partners regarded as, towards each other, 142
  - SURETY, 186—188
- PRIORITY of creditor by judgment against executor, 345
- PRIVATE AND PUBLIC nuisances, 137
  - CONTRACT, sale by trustees by, 216
- PRIVY COUNCIL, doctrines laid down in ecclesiastical cases, 311
- PROBATE, 277—287
  - OF WILL of person domiciled abroad, 278
  - — of married woman, 363
  - when evidence of devise, 355
  - DUTY, 363
- PROCEDENDO, WRIT OF, 178
- PROFIT *à prendre*, 79
- PROMISE to answer for debt, default, &c., of another, 64, 65
- PROMISSORY NOTE, 354
  - — payable on demand, when interest due thereon, 102
  - NOTES and bills of exchange, 17
  - — bequeathed for separate use, 227
- PROMOTER of public company, 378
- PROPRIETORS, neighbouring, 133
- PROOF against assets of company since Judicature Acts, 35
  - for penalty or liquidated damages, 9
  - in case of bankruptcy on accommodation bill, 17
  - of debt payable on contingency, 15
  - of wife of bankrupt for annuity secured by a separation deed, 198
  - on bankruptcy of drawer, acceptor, or indorser of bill or note, 17
- PROPERTY in a ship when it passes under a contract to builder, 44
- PROTECTOR of a settlement, 57



- PROTEST necessary in case of foreign bill, 18  
 PROSECUTION, ACTION dismissed for want of, 165  
 PUBLICATION of a libel, 262  
 PUBLIC AUCTION, sale by trustees by, 216  
     — AND PRIVATE nuisances, 137  
     — WORSHIP ACT, 1874,...319, 320  
 PURCHASER AND VENDOR, 231  
     — for value *bond fide* without notice, 135, 235, 238  
     — of goods when perfect title acquired, 240  
     — heir, when devisee, takes as a, 80, 81  
     — resulting trust in favour of, 227, 228  
     — when responsible for application of purchase money, 239  
  
 QUEEN'S PROCTOR, intervention of, 297  
 QUI PRIOR est tempore potior est jure, 128  
  
 RAILWAY COMPANY, delivery of goods to, 20  
     — — letting statutory time pass, its effect on specific performance, 211  
     — — taking land compulsorily, 46  
     — COMPANY'S liability as carrier of passengers, 131  
 REAL ESTATE, CONVERSION of, into personalty, 44  
     — COSTS of administering, how borne, 171  
     — WILLS of, when entitled to probate, 282  
 RECEIVER appointed, equitable execution, 175  
 RECONVERSION, doctrine of, 339  
 REGISTERED COMPANY, when wound up, 33  
 REGISTRATION OF BILL OF SALE, 18  
     — TITLE, 188  
 RELEASE, 189  
     — of a surety, 187—188  
 RELIEF granted against sale of reversion, 197  
 REMAINDERMAN and tenant for life, profits of unauthorised investment, how applied between, 217  
     — if bound by agreement for lease by tenant for life, 207—208  
 REMAINDERMAN'S rights against lessee, 87  
 REMAINDERS, 189  
 REMEDIES of mortgagee, 129  
 REMOVAL from or to High Court, 380

- RENEWED LEASE, 232
- RENUNCIATION of executorship, 281
- RENT, ACCEPTANCE of, after breach of covenant, 84
  - CHARGES, 214, 237
  - covenant to, how far mortgagee liable to perform, 123
  - reserved by attornment clause in a mortgage, 129
- REPUGNANT CONDITION to a legacy, 93
- RESERVOIR, liability of owner for damage caused by, 134
- RESIDUARY BEQUEST of personal estate to be enjoyed by several persons in succession, rule in the case of, 97, 377
  - DEVISEE takes in default of appointment under a general power, 160
- RESIDUE UNDISPOSED of, 245
- RESTITUTION of conjugal rights, 292
- RESTRAINING a creditor in bankruptcy proceedings, 12
- RESTRAINT OF MARRIAGE, validity of contracts in, 40
  - — gifts in, 38
  - TRADE, contracts in, 40
  - on anticipation, 67, 70, 75
- RESULTING TRUSTS, 160, 224, 227, 228
  - USE, 229
- RETAINER, executor's right of, 59
- REVERSIONARY INTERESTS, 194
  - of married woman in personalty, 376
- REVIVAL OF WILLS, 279
- REVOCATION OF WILLS, 243, 279
  - former wills may not affect power exercised in that will, 156
  - voluntary settlement, 204
- REVERSIONARY INTEREST of married woman, 74
- REVIVAL in matrimonial cases, 292
- RIGHTS, PATENT, 148
- RIOT ACT, 264
- RUBBIC, construction of, 310—311
- SALE BY AUCTION, verbal declarations at, 233
  - BY TENANT FOR LIFE, effect on mortgagees, 202
  - in a partition action, 140
  - OF GOODS, 352
  - OF LANDS by executors to pay debts, 334

- SALE OF REVERSIONS, 194, 195
  - by mortgagee, how proceeds applied, 128
- SALVAGE AGREEMENT, 365
  - principles of law of, 300—301
- SAMPLE, sale of goods by, 240
- SATISFACTION, 196, 335
- SCINTILLA JURIS, 221
- SEARCHES on completion of purchase, 236
- SEATS in a church, 314
- SECOND MORTGAGE, remedies under, 129
- SECURED CREDITOR by garnishee order, 10, 380
- SECURITY obtained by one surety benefits another, 187
  - taking additional, its effect on surety, 188
- "SECURITIES," meaning of, in a will, 248
- SEISIN, actual and virtual, in law and in deed, 212
- SELF-DEFENCE, 252
- SEPARATE USE, 66—79
- SEPARATION DEEDS, 197
  - JUDICIAL, 290, 381
- SEQUESTRATION, WRIT OF, 177
- SERVANT AND MASTER, 105
  - OR AGENT not a partner by sharing profits, 147
- SETTING ASIDE order for service of writ out of jurisdiction, 164
- SETTLED ESTATES, 199—202
  - — ACT, 1877,...199
  - LAND ACT, 1882, ..324
- SETTLEMENT, equity to a, 77
  - in fraud of marital rights, 76
  - protector of, 57
- SETTLEMENTS and voluntary dispositions, 202—206, 326
  - power of Divorce Court over, 294
- SHARES in company repudiated after sale, 347
  - of limited company, how paid up, 31, 32
- SHIP AND FREIGHT, mortgages of, 305
- SHIP, contract to build a, 44
  - employment of, on disputes between owners, 382
- "SHIPPING DOCUMENTS," meaning of, 115
  - power of master to pledge owner's credit, 349, 351
- SILENCE, when it amounts to fraud, 62
- SOLD AND BOUGHT NOTE of broker, 42

- SOLICITOR AND CLIENT, conveyance between, 220
- SOLICITOR'S LIEN, 377
- SPECIAL CUSTOM of descent, 325
  - POWER, 151, 157, 162
- SPECIFIC CROP of potatoes, contract to sell, 41
  - LEGACIES, 91
  - PERFORMANCE, 207, 336, 377
- SPECULATING on Stock Exchange, 184—185
- SPRINGING and shifting uses, 221
- STATUTE barred debt, appropriation of, 6
  - OF DISTRIBUTION, 50—51
  - OF FRAUDS, 43, 64, 65
  - MERCHANT, estates by, how superseded, 173
  - STAPLE, estates by, how superseded, 173
- STATUTES OF LIMITATIONS, 101
- STAY OF PROCEEDINGS on clause to refer to arbitration, 167
- STEALING from an empty pocket, attempt at, 235
- STEPS IN AN ADMINISTRATION action, 170
  - in a compulsory winding-up of a company, 34
- STOCK EXCHANGE, effect of agreement only to pay differences on, 184
- STOLEN GOODS purchased in market overt, 240
  - MONEYS, receiving, 259
- STOPPAGE *in transitu*, 116
- STRICT SETTLEMENT of family estates, 202
- SUCCESSION DUTY, 212
  - , personal estate bequeathed so as to be enjoyed in, 97
- SUFFERANCE, tenancies by, 85
- SUMMARY JURISDICTION ACT, 1879,...268—277
- SUMMONS before magistrate, 361
- SUPREME COURT, practice of, 162
- SURETY AND PRINCIPAL, 186
  - giving time to creditor, 378
- SURETIES' right to marshall, 344
- SURFACE, injury to, by digging, when time begins to run, 103
  - subsidence of, 88
- SURRENDER OF LEASE, effect of disclaimer as, 88, 90
- SURVIVORSHIP, right of wife by, 77

- TACKING, doctrine of, 124, 128
- TAXATION OF COSTS, when claim and counterclaim, 172
- TECHNICAL EXPRESSIONS, 212
- TENANCIES AT WILL, 85
  - BY SUFFERANCE, 85
  - from year to year, 85
- TENANT AND LANDLORD, 84—91
  - FOR LIFE, a married woman, 199
  - — leases by, 87
  - FOR LIFE'S agreement to lease, when binding on remainderman, 208
  - — mortgages, effect on power of sale given to trustees, 202
- TENDER, 379
- TENTERDEN'S ACT, Lord, 65
- TESTAMENTARY CAPACITY, 277
  - charge of debts, 334
- TEST OF PARTNERSHIP, *inter parter* and *quoad* third parties, 142—146
- THIRD PARTY, contribution or indemnity from, 168—169
- TITHE COMMUTATION ACTS, 214
  - RENT-CHARGE, 214
- TITLE, DECLARATION of, 188
  - REGISTRATION of, 188
- TORT, restraining action for, by Bankruptcy Court, 12
- TOTAL LOSS, constructive, 119
- TRADE, carrying on, by executors, 59
  - , CONTRACTS in restraint of, 40
  - CUSTOM, 48
- TRADING by parsons, 382
- TRANSITU, stoppage in, 379
- TRIAL, modes of, 165
- TROVER, ACTION for, by trustee in bankruptcy, 241
- TRUST POWERS, 3, 150
- TRUSTEE as contributory of a company, 36
  - for next of kin, executor when a, 246
  - when a mortgagee, 225
- TRUSTEES, 215
  - appointment of new, 218
  - breach of trust by, 217
  - disclaimer of lease by, 88

- TRUSTEES, exercise of general power in favour of beneficiaries through, 160
- investment by, in business, 217
  - one a married woman, selling by auction, 233, 234
- TRUSTS AND USES, 221
- enforced when property abroad, 378
  - resulting, 160, 227—228
- TRUTH of a libel when a defence, 262
- TWENTY-ONE, legacies given at, 93, 96
- UNDISPOSED of residue, 245
- UNDUE INFLUENCE, 220
- deeds obtained by, 340
- UNLIMITED COMPANY, liability of past member of, 37
- "UNMARRIED," meaning of, 158
- UN SOUND MIND, vendor becoming, 234
- USAGE OF TRADE, 48
- USES AND TRUSTS, 221
- limitation to, 222
  - resulting to settlor, 229
- VENDOR AND PURCHASER, 231
- — of goods, 111—119
  - becoming of unsound mind after defective conveyance made, 234
  - receiving annuity out of profits does not become partner, 147
- VENDOR'S inability to pay, effect on contract, 12
- VESTED REMAINDERS, 190, 192
- VESTING OF LEGACIES, 92, 93, 96
- VOLUNTARY dispositions, 202—206
- GIFTS, 205, 326
  - SETTLEMENT, 326
- VOTE, REFUSAL of, by returning officer of candidate, 39—40
- WAGES, maritime, lien for, 308
- WAGERING CONTRACT to speculate on Stock Exchange, 184
- WARD, guardian and, 65
- WARRANT, delivery of, alone insufficient, 43
- WARRANTY implied, sale by sample, 240

- WARRANTY of horse, breach of, 380
  - on sale of goods, 43
- WASTING PROPERTY bequeathed in succession, 98
- WATER, danger of, collecting, 134
  - depriving inhabitants of a place a crime, when, 257
- WIDOW OR CHILD not partner of trader because of annuity, 147
- WIFE, advancement to, by purchase in name of, 227—228
  - AND HUSBAND as witnesses, 296
  - AS LEGATEE, and husband executor, 94—95
  - LIABILITY of, for crime, 259
- WIFE'S WILL, 247, 280, 281
- WILD'S CASE, 58
- WILL. See *Legacies*.
  - construction of, 376
  - when probate granted to codicil only, 283
  - containing charitable bequests, 21, 23
  - devisee's power of sale owing to charge for debts, 334
  - "die without issue" in, 327
  - disclaimer of trusts of, 215
  - election under, 54—57
  - execution of power by, 157, 159
  - incorporation of documents in a, 284
  - of married woman, 66, 247, 280, 363
  - of land in favour of issue which fails, 376
  - power exerciseable by deed executed by, 152, 159
  - probate of, of person domiciled abroad, 278
  - property acquired by, 231
  - revocation and revival of, 279, 381
  - tenant at, 85
  - though revoked, still valid as an exercise of a power, 156
- WILLS, 242—249
  - ACT, 161, 242
  - gifts to a class in, 327
  - of real estate, when entitled to probate, 282—283
- WINDING-UP liabilities of different contributories of a company, 36
  - liability of policy-holders under, 143
  - compulsory order for steps under, 34
  - proofs and executions under, 35
  - of unlimited company, liability of past member, 37
  - when made, 33

- WINE supplied to a club, 183  
WITNESSES' credit, impeaching, 166  
WORDS "die without issue," 327  
— executors, &c., when surplusage, 94  
WRIT, ENDORSEMENT ON, in administration action, 169, 170  
— SERVICE out of jurisdiction, setting aside order for, 164  
  
YEAR TO YEAR, tenancy from, 85

THE END.





September, 1883.

A CATALOGUE  
OF  
LAW WORKS,  
PUBLISHED BY  
**STEVENS AND SONS,**  
119, CHANCERY LANE, LONDON, W.C.  
(And at 14, Bell Yard, Lincoln's Inn).

NOTE.—All letters to be addressed to Chancery Lane, NOT to Bell Yard.

**A Catalogue of Modern Law Works** (including the leading American, Indian, Irish and Scotch); together with a complete Chronological List of all the English, Irish and Scotch Reports, Abbreviations used in reference to Law Reports and Text Books, and an Index of Subjects (112 pp.), 8vo, cloth lettered, may be had on application.

**Acts of Parliament.**—Public and Local Acts from an early date, may be had of the Publishers of this Catalogue, who have also on sale the largest collection of Private Acts, relating to Estates, Enclosures, Railways, Roads, &c., &c.

**ACTION AT LAW.**—Foulkes' Elementary View of the Proceedings in an Action.—Founded on "SMITH'S ACTION AT LAW." By W. D. L. FOULKES, Esq., Barrister-at-Law. Second Edition. 12mo. 1879. 10s. 6d.

Prentice's Proceedings in an Action in the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice. By SAMUEL PRENTICE, Esq., one of Her Majesty's Counsel. Second Edition. Royal 12mo. 1880. 12s.

**ADMIRALTY.**—Roscoe's Admiralty Practice.—A Treatise on the Jurisdiction and Practice of the Admiralty Division of the High Court of Justice, and on Appeals therefrom, with a chapter on the Admiralty Jurisdiction of the Inferior and the Vice-Admiralty Courts. With an Appendix containing Statutes, Rules as to Fees and Costs, Forms, Precedents of Pleadings and Bills of Costs. By EDWARD STANLEY ROSCOE, Esq., Barrister-at-Law. Second Edition. Revised and Enlarged. Demy 8vo. 1882. 11. 4s.

"A clear digest of the law and practice of the Admiralty Courts."

"A comprehensive and useful manual of practice."—*Solicitors' Journal*.

**ADVOCACY.**—Harris' Hints on Advocacy. Conduct of Cases Civil and Criminal. Classes of Witnesses and suggestions for Cross-Examining them, &c., &c. By RICHARD HARRIS, Barrister-at-Law, of the Middle Temple and Midland Circuit. Sixth Edition. (Further Revised and Enlarged.) Royal 12mo. 1882. 7s. 6d.

"Full of good sense and just observation. A very complete Manual of the Advocate's art in Trial by Jury."—*Solicitors' Journal*.

"A book at once entertaining and really instructive. . . . Deserves to be carefully read by the young barrister whose career is yet before him."—*Law Magazine*.

[No. 31.]

A

**AGENCY.**—Petgrave's Principal and Agent.—A Manual of the Law of Principal and Agent. By E. C. PETGRAVE, Solicitor. 12mo. 1857. 7s. 6d.

Russell's Treatise on Mercantile Agency.—Second Edition. 8vo. 1873. 14s.

**AGRICULTURAL LAW.**—Addison's Practical Guide to the Agricultural Holdings (England) Act, 1878, and Treatise thereon, showing the Alterations in the Law, &c. By ALBERT ADDISON, Solicitor. 12mo. 1876. Net. 2s. 6d.

Cooke's Treatise on the Law and Practice of Agricultural Tenancies.—New edition, in great part rewritten with especial reference to Unexhausted Improvements, with Modern Forms and Precedents. By G. PRIOR GOLDNEY, of the Western Circuit, and W. RUSSELL GRIFFITHS, LL.B., of the Midland Circuit, Barristers-at-Law. Demy 8vo. 1882. 11. 1s.

"In its present form it will prove of great value to politicians, lawyers and agriculturalists."—*Law Times*.

A book of great practical utility to landlords and tenant farmers, as well as to the legal profession."—*Law Magazine*.

Dixon's Farm.—*Vide* "Farm."

**ARBITRATION.**—Russell's Treatise on the Power and Duty of an Arbitrator, and the Law of Submissions and Awards; with an Appendix of Forms, and of the Statutes relating to Arbitration. By FRANCIS RUSSELL, Esq., M.A., Barrister-at-Law. Sixth Edition. By the Author and HERBERT RUSSELL, Esq., Barrister-at-Law. Royal 8vo. 1882. 36s.

"The cases are carefully collected, and their effect is clearly and shortly given."

This edition may be commended to the profession as comprehensive, accurate and practical."—*Solicitors' Journal*, January 13, 1883.

**ARTICLED CLERKS.**—Rubinstein and Ward's Articled Clerks' Handbook.—Being a Concise and Practical Guide to all the Steps Necessary for Entering into Articles of Clerkship, passing the Preliminary, Intermediate, Final, and Honours Examinations, obtaining Admission and Certificate to Practise, with Notes of Cases affecting Articled Clerks, Suggestions as to Mode of Reading and Books to be read during Articles, and an Appendix containing the questions asked at the recent Preliminary, Intermediate, Final, and Honours Examinations. Third Edition. By J. S. RUBINSTEIN and S. WARD, Solicitors. 12mo. 1881. 4s.

"No articled clerk should be without it."—*Law Times*.

"We think it omits nothing which it ought to contain."—*Law Journal*.

**ARTICLES OF ASSOCIATION.**—Palmer.—*Vide* "Conveyancing."

**ATTORNEYS.**—Cordery.—*Vide* "Solicitors."

Pulling's Law of Attorneys, General and Special, Attorneys-at-Law, Solicitors, Notaries, Proctors, Conveyancers, Scriveners, Land Agents, House Agents, &c., and the Offices and Appointments usually held by them, &c. By ALEXANDER PULLING, Serjeant-at-Law. Third Edition. 8vo. 1862. 18s.

Smith.—The Lawyer and his Profession.—A Series of Letters to a Solicitor commencing Business. By J. ORTON SMITH. 12mo. 1860. 4s.

**ASSETS, ADMINISTRATION OF.**—Eddis' Principles of the Administration of Assets in Payment of Debts. By ARTHUR SHELLY EDDIS, one of Her Majesty's Counsel. Demy 8vo. 1880. 6s.

"The subject is one of considerable importance, and we have no doubt that the author's treatment of it will assist students and others in acquiring the elementary principles of this head of equity jurisprudence. The cases are brought down to the present time."—*Law Times*.

\* \* \* All standard Law Works are kept in Stock, in law calf and other bindings.

**AVERAGE.**—Hopkins' Hand-Book on Average.—Fourth Edition. 8vo. (In preparation.)

**Lowndes' Law of General Average.**—English and Foreign. Fourth Edition. By RICHARD LOWNDES, Author of "The Admiralty Law of Collisions at Sea," "The Law of Marine Insurance." (In preparation.)

**BALLOT.**—FitzGerald's Ballot Act.—With an INTRODUCTION. Forming a Guide to the Procedure at Parliamentary and Municipal Elections. Second Edition. Enlarged, and containing the Municipal Elections Act, 1875, and the Parliamentary Elections (Returning Officers) Act, 1875. By GERALD A. R. FITZGERALD, M.A., of Lincoln's Inn, Esq., Barrister-at-Law. Fcap. 8vo. 1876. 5s. 6d.  
 "A useful guide to all concerned in Parliamentary and Municipal Elections."—*Law Magazine*.

"We should strongly advise any person connected with elections, whether acting as candidate, agent, or in any other capacity, to become possessed of this manual."

**BANKING.**—Walker's Treatise on Banking Law. Including the Crossed Checks Act, 1876, with dissertations thereon, also references to some American Cases, and full Index. By J. DOUGLAS WALKER, Esq., Barrister-at-Law. Demy 8vo. 1877. 14s.

"Persons who are interested in banking law may be guided out of many a difficulty by consulting Mr. Walker's volume."—*Law Times*.

**BANKRUPTCY.**—Bedford's Final Examination Guide to Bankruptcy.—Fourth Edition. (In preparation.)

Haynes.—*Vide* "Leading Cases."

Pitt-Lewis.—*Vide* "County Courts."

Salaman.—*Vide* "Liquidation by Arrangement."

Scott's Costs in Bankruptcy.—*Vide* "Costs."

**Smith's Manual of Bankruptcy.**—A Manual relating to Bankruptcy, Insolvency, and Imprisonment for Debt; comprising the New Statute Law verbatim, in a consolidated and readable form. With the Rules, a Copious Index, and a Supplement of Decisions. By JOSIAH W. SMITH, B.C.L., Q.C. 12mo. 1873. 10s.

\* \* The Supplement may be had separately, net, 2s. 6d.

**Williams' Law and Practice in Bankruptcy:** comprising the Bankruptcy Act, the Debtors Act, and the Bankruptcy Repeal and Insolvent Court Act of 1869, and the Rules and Forms made under those Acts. Second Edition. By ROLAND VAUGHAN WILLIAMS, Esq., and WALTER VAUGHAN WILLIAMS, Esq., assisted by FRANCIS HALLETT HARDCASTLE, Esq., Barristers-at-Law. 8vo. 1876. 17. 8s.

"It would be difficult to speak in terms of undue praise of the present work."

**BAR, GUIDE TO THE**—Shearwood.—*Vide* "Examination Guides."

**BILLS OF EXCHANGE.**—Chalmers' Digest of the Law of Bills of Exchange, Promissory Notes, and Cheques. By M. D. CHALMERS, of the Inner Temple, Esq., Barrister-at-Law. Second Edition. Demy 8vo. 1881. 15s.

"In its present form this work contains a very complete digest of the subjects to which it relates."—*Law Times*.

"As a handy book of reference on a difficult and important branch of the law, it is most valuable, and it is perfectly plain that no pains have been spared to render it complete in every respect. The index is copious and well arranged."—*Saturday Review*.

**Chitty on Bills of Exchange and Promissory Notes,** with references to the law of Scotland, France and America.—Eleventh Edition. By JOHN A. RUSSELL, Esq., LL.B., one of Her Majesty's Counsel, and Judge of County Courts. Demy 8vo. 1878. 17. 8s.

\* \* All standard Law Works are kept in Stock, in law calf and other bindings.

**BILLS OF LADING.**—Leggett's Treatise on the Law of Bills of Lading; comprising the various legal incidents attaching to the Bill of Lading; the legal effects of each of the Clauses and Stipulations; and the Rights and Liabilities of Consignors, Consignees, Indorsees, and Vendees, under the Bill of Lading. With an Appendix, containing Forms of Bills of Lading &c. By EUGENE LEGGETT, Solicitor and Notary Public. Demy 8vo. 1880. 1*l*. 1*s*.

**BILLS OF SALE.**—Fithian's Bills of Sale Acts, 1878 and 1882. With an Introduction and Explanatory Notes showing the changes made in the Law with Respect to Bills of Sale. By EDWARD WILLIAM FITHIAN, of the Middle Temple, Esq., Barrister-at-Law (*Draftsman of the Bill of 1882*). Royal 12mo. 1882. 5*s*.

"Mr. Fithian's book will maintain a high place among the most practically useful editions of the Bills of Sale Acts, 1878 and 1882."—*Law Magazine*.

**CARRIERS.**—Browne on Carriers.—A Treatise on the Law of Carriers of Goods and Passengers by Land and Water. With References to the most recent American Decisions. By J. H. B. BROWNE, Esq., Barrister-at-Law. 8vo. 1873. 18*s*.

**CHANCERY, and Vide "EQUITY."**

**CHITTY'S INDEX, vide DIGESTS.**

**Daniell's Chancery Practice.**—The Practice of the Chancery Division of the High Court of Justice and on appeal therefrom, being the Sixth Edition of Daniell's Chancery Practice, with alterations and additions and references to a companion Volume of Forms. By L. FIELD, E. C. DUNN, and T. RIBTON, assisted by W. H. UPJOHN, Barristers-at-Law. In 2 vols. Vol. I. (*with Table of Cases and an Index*), demy 8vo. 1882. 2*l*. 2*s*.

"This new edition of the Standard Chancery Practice will be generally welcomed, and we are glad that we can speak favourably of the manner in which the editors have accomplished their difficult task of deciding what parts of the old work should be rejected, and of adapting the parts retained to the new practice. There is to be found, in every part of the book we have examined, evidence of great care; the cases are not merely jotted down, but analysed and considered, and no pains appear to have been spared to render the information given both accurate and complete. This is high praise, but we think it is fully warranted by the result of our examination of the work. . . . It is exactly what it professes to be—a concise and careful digest of the practice."—*Solicitors' Journal*.

"All the portions relating to the practice introduced by the Judicature Acts and Rules are well done."—*Law Times*.

"The learned authors have spared no pains to make this new book of practice as comprehensive in scope and as accurate in detail as that which so long enjoyed an almost unique reputation as 'Daniell's Practice.' Indeed if any fault is to be alleged it would be that the work is perhaps somewhat too exhaustive; a fault, however, which is on the right side in a book of practice, which is not intended to be read through, but to serve as a mine of information for ready reference whenever the practitioner may have occasion to seek for guidance."—*Law Magazine*.

\* \* Vol. II. is in the press, and will be published shortly.

**Daniell's Forms and Precedents of Proceedings in the Chancery Division of the High Court of Justice and on Appeal therefrom; with Dissertations and Notes.** Being the Third Edition of "Daniell's Chancery Forms." By WILLIAM HENRY UPJOHN, Esq., of Gray's Inn. &c. Demy 8vo. 1879. 2*l*. 2*s*.

"Mr. Upjohn has restored the volume of Chancery Forms to the place it held before the recent changes, as a trustworthy and complete collection of precedents. It has all the old merits; nothing is omitted as too trivial or commonplace; the solicitor's clerk finds how to indorse a brief, and how, when necessary, to give notice of action; and the index to the forms is full and perspicuous."—*Solicitors' Journal*.

"It will be as useful a work to practitioners at Westminster as it will be to those in Lincoln's Inn."—*Law Times*.

\* \* All standard Law Works are kept in Stock, in law only and other bindings.

**CHANCERY.**—*Continued.*

**Haynes' Chancery Practice.**—The Practice of the Chancery Division of the High Court of Justice and on Appeal therefrom.—By JOHN F. HAYNES, LL.D. Demy 8vo. 1879. 17. 5s.

**Morgan's Chancery Acts and Orders.**—The Statutes, General Orders, and Rules of Court relating to the Practice, Pleading, and Jurisdiction of the Supreme Court of Judicature, particularly with reference to the Chancery Division, and the Actions assigned thereto. With copious Notes. Fifth Edition. Adapted to the new Practice by GEORGE OSBORNE MORGAN, M.P., one of Her Majesty's Counsel, and CHALONER W. CHUTE, Barrister-at-Law. Demy 8vo. 1876. 17. 10s.

"This edition of Mr. Morgan's treatise must, we believe, be the most popular with the profession."—*Law Times*.

**Morgan and Wurtzburg's Chancery Costs.**—*Vide "Costs."*

**Peel's Chancery Actions.**—A Concise Treatise on the Practice and Procedure in Chancery Actions.—Second Edition. Including the Practice in Chambers. By SYDNEY PEEL, of the Middle Temple, Esq., Barrister-at-Law. Demy 8vo. 1881. 8s. 6d.

"Mr. Peel's little work gives a very commendable sketch of the modern practice of the Chancery Division. . . . It contains some chapters upon Proceedings at Chambers and on further Consideration, which are likely to be valuable from the extreme paucity of all printed information upon these subjects; and it is enriched with a very full list of cases bearing upon the practice of the Chancery Division, giving references to all the Reports."—*Law Journal*.

"The book will give to the student a good general view of the effect on chancery practice of the Judicature Acts and Orders."—*Solicitors' Journal*.

**CHANCERY PALATINE OF LANCASTER.**—Snow and Winstanley's Chancery Practice.—The Statutes, Consolidated and General Orders and Rules of Court relating to the Practice, Pleading and Jurisdiction of the Court of Chancery, of the County Palatine of Lancaster. With Copious Notes of all practice cases to the end of the year 1879, Time Table and Tables of Costs and Forms. By THOMAS SNOW, M.A., and HERBERT WINSTANLEY, Esqrs., Barristers-at-Law. Royal 8vo. 1880. 17. 10s.

**CIVIL LAW.**—Bowyer's Commentaries on the Modern Civil Law.—Royal 8vo. 1848. 18s.

**Bowyer's Introduction to the Study and Use of the Civil Law.**—Royal 8vo. 1874. 5s.

**COLLISIONS.**—Lowndes' Admiralty Law of Collisions at Sea.—8vo. 1867. 7s. 6d.

**Marsden on Maritime Collision.**—A Treatise on the Law of Collisions at Sea. With an Appendix containing Extracts from the Merchant Shipping Acts, the International Regulations (of 1863 and 1880) for preventing Collisions at Sea; and local Rules for the same purpose in force in the Thames, the Mersey, and elsewhere. By REGINALD G. MARSDEN, Esq., Barrister-at-Law. Demy 8vo. 1880. 12s.

**COLONIAL LAW.**—Clark's Summary of Colonial Law and Practice of Appeals from the Plantations. 8vo. 1884. 11. 4s.

**COMMENTARIES ON THE LAWS OF ENGLAND.**—Broom and Hadley's Commentaries on the Laws of England. By HERBERT BROOM, LL.D., and EDWARD A. HADLEY, M.A., Barristers-at-Law. 4 vols. 8vo. 1869. (*Published at 31. 3s.*) Net, 14. 1s.

\*.\* All standard Law Works are kept in Stock, in law calf and other bindings.

**COMMERCIAL LAW.**—Goirand's French Code of Commerce and most usual Commercial Laws. With a Theoretical and Practical Commentary, and a Compendium of the judicial organization and of the course of procedure before the Tribunals of Commerce; together with the text of the law; the most recent decisions of the Courts, and a glossary of French judicial terms. By LEOPOLD GOIRAND, Licencié en droit. In 1 vol. (850 pp.). Demy 8vo. 1880. 2l. 2s.

Levi.—*Vide* "International Law."

**COMMON LAW.**—Archbold's Practice of the Queen's Bench, Common Pleas and Exchequer Divisions of the High Court of Justice in Actions, etc., in which they have a common jurisdiction.—Thirteenth Edition. By SAMUEL PRENTICE, Esq., one of Her Majesty's Counsel. 2 vols. Demy 8vo. 1879. 3l. 3s.

**Archibald's Country Solicitor's Practice; a Handbook of the Practice in the Queen's Bench Division of the High Court of Justice; with Statutes and Forms.** By W. F. A. ARCHIBALD, Esq., Barrister-at-Law, Author of "Forms of Summonses and Orders, with Notes for use at Judges' Chambers." Royall 12mo. 1881. 1l. 5s.

"We are much mistaken if it does not become as widely used among the profession as the best known editions of the Judicature Acts. . . . In every place in which we have tested the work we find it thoroughly trustworthy. . . . Its arrangement is excellent, and altogether it is likely enough to become a popular solicitors' handy-book."—*The Times*.

"We have no doubt that it will meet with due appreciation at the hands of both London and Country solicitors."—*The Law Magazine*.

"The author is to be very much complimented on this most careful and comprehensive manual. Admirably arranged and indexed."—*Saturday Review*.

"The commentary is extremely well written. Mr. Archibald has succeeded in producing a useful and well-arranged book."—*Solicitors' Journal*.

**Ball's Short Digest of the Common Law; being the Principles of Torts and Contracts.** Chiefly founded upon the works of Addison, with Illustrative Cases, for the use of Students. By W. EDMUND BALL, LL.B., late "Holt Scholar" of Gray's Inn, Barrister-at-Law and Midland Circuit. Demy 8vo. 1880. 16s.

"The principles of the law are very clearly and concisely stated."—*Law Journal*.

**Bullen and Leake.**—*Vide* "Pleading."

**Chitty.**—*Vide* "Forms." **Foulkes.**—*Vide* "Action."

**Prentice.**—*Vide* "Action."

**Shirley.**—*Vide* "Leading Cases."

**Smith's Manual of Common Law.**—For Practitioners and Students. Comprising the fundamental principles and the points most usually occurring in daily life and practice. By JOSIAH W. SMITH, B.C.L., Q.C. Ninth Edition. 12mo. 1880. 14s.

**COMMONS AND INCLOSURES.**—Chambers' Digest of the Law relating to Commons and Open Spaces, including Public Parks and Recreation Grounds, with various official documents; precedents of by-laws and regulations. The Statutes in full and brief notes of leading cases. By GEORGE F. CHAMBERS, Esq., Barrister-at-Law. Imperial 8vo. 1877. 6s. 6d.

**COMPANY LAW.**—Palmer's Private Companies, their Formation and Advantages; or, How to Convert your Business into a Private Company, and the benefit of so doing. With Notes on "Single Ship Companies." Fourth Edition. By F. B. PALMER, Esq., Barrister-at-Law. Author of "Company Precedents." 12mo. 1883. 7s. 2s.

Palmer.—*Vide* "Conveyancing."

\* \* All standard Law Works are kept in Stock, in law calf and other bindings.

**COMPANY LAW.**—*Continued.*

**Palmer's Shareholders' and Directors' Legal Companion.**—A Manual of every-day Law and Practice for Promoters, Shareholders, Directors, Secretaries, Creditors and Solicitors of Companies, under the Companies' Acts, 1862 to 1880. Fourth Edition. With an Appendix on the Conversion of Business Concerns into Private Companies. By F. B. PALMER, Esq., Barrister-at-Law. 12mo. 1883. *Net, 2s. 6d.*

**Thring.**—*Vide* "Joint Stocks."

**CONTINGENT REMAINDERS.**—An Epitome of Fearn's on Contingent Remainders and Executory Devises. Intended for the Use of Students. By W. M. C. Post 8vo. 1878. *6s. 6d.*

"The student will find a perusal of this epitome of great value to him."—*Law Journal.*

**CONTRACTS.**—Addison on Contracts.—Being a Treatise on the Law of Contracts. Eighth Edition. By HORACE SMITH, Esq., Barrister-at-Law, Recorder of Lincoln, Author of "A Treatise on the Law of Negligence," &c. Royal 8vo. 1883. *2l. 10s.*

"To the present editor must be given all praise which untiring industry and intelligent research can command. He has presented the profession with the law brought down to the present date clearly and fully stated."—*Law Times.*

"We think that this edition of Addison will maintain the reputation of the work as a satisfactory guide to the vast storehouse of decisions on contract law."—*Solicitors' Journal.*

**Fry.**—*Vide* "Specific Performance."

**Leake on Contracts.**—An Elementary Digest of the Law of Contracts (being a new edition of "The Elements of the Law of Contracts"). By STEPHEN MARTIN LEAKE, Barrister-at-Law. 1 vol. Demy 8vo. 1878. *1l. 18s.*

**Pollock's Principles of Contract.**—Being a Treatise on the General Principles relating to the Validity of Agreements in the Law of England. Third Edition, revised and partly rewritten. By FREDERICK POLLOCK, of Lincoln's Inn, Esq., Barrister-at-Law. Demy 8vo. 1881. *1l. 8s.*

The late Lord Chief Justice of England in his judgment in *Metropolitan Railway Company v. Bropden and others*, said, "The Law is well put by Mr. Frederick Pollock in his very able and learned work on Contracts."—*The Times.*

"We have nothing but praise for this (third) edition. The material recent cases have been added and the whole work has been carefully revised."—*Solicitors' Journal.*

"A work which, in our opinion, shows great ability, a discerning intellect, a comprehensive mind, and painstaking industry."—*Law Journal.*

"For the purposes of the student there is no book equal to Mr. Pollock's."  
"He has succeeded in writing a book on Contracts which the working lawyer will find as useful for reference as any of its predecessors, and which at the same time will give the student what he will seek for in vain elsewhere, a complete rationale of the law."—*Law Magazine and Review.*

**Smith's Law of Contracts.**—Seventh Edition. By V. T. THOMPSON, Esq., Barrister-at-Law. Demy 8vo. 1878. *1l. 1s.*

**CONVEYANCING.**—Dart.—*Vide* "Vendors and Purchasers."

**Dawson's Synopsis of the Conveyancing and Law of Property Act, 1881;** with Index and Forms. By J. W. DAWSON, Solicitor. 1881. *Net, 2s. 6d.*

**Harris and Clarkson's Conveyancing and Law of Property Act, 1881, and the Vendor and Purchaser Act, 1874;** with Introduction, Notes and Copious Index. By W. MANNING HARRIS, M.A., and THOMAS CLARKSON, M.A., Barristers-at-Law. Demy 8vo. 1882. *9s.*

"The notes in this volume are more copious and exhaustive than those in any other edition of these Acts which has at present appeared."—*The Law Journal.*

\*. \* All standard Law Works are kept in Stock, in law calf and other bindings.



**CONVEYANCING.**—*Continued.*

**Greenwood's Manual of Conveyancing.**—A Manual of the Practice of Conveyancing, showing the present Practice relating to the daily routine of Conveyancing in Solicitors' Offices. To which are added Concise Common Forms and Precedents in Conveyancing. Seventh Edition. Including a Supplement written with special reference to the Acts of 1882, and an Appendix, comprising the Order under the Solicitors' Remuneration Act, 1881, with Notes thereon. Edited by HARRY GREENWOOD, M.A., Esq., Barrister-at-Law. Demy 8vo. 1882. 16s.

\* \* *The Supplement may be had separately. Price 2s.*

"The Author has carefully worked the provisions of the Act into his text, calling special attention to the effect of those sections which make absolute changes in the law, as distinguished from those which are merely optional for adoption or exclusion."  
—*The Law Magazine.*

"We should like to see it placed by his principal in the hands of every articulated clerk. One of the most useful practical works we have ever seen."  
—*Indermaur's Law Students' Journal.*

**Humphry's Common Precedents in Conveyancing.** Adapted to the Conveyancing Acts, 1881-82, and the Settled Land Act, 1882, &c., together with the Acts, an Introduction, and Practical Notes. Second Edition. By HUGH M. HUMPHRY, M.A., Esq., Barrister-at-Law. Demy 8vo. 1882. 12s. 6d.

"The collection of Precedents is sufficiently comprehensive for ordinary use, and is supplemented by concise foot notes mainly composed of extracts from statutes necessary to be borne in mind by the draftman."  
—*Law Magazine.*

"A work that we think the profession will appreciate."  
—*Law Times.*

**Palmer's Company Precedents.**—For use in relation to Companies subject to the Companies' Acts, 1862 to 1880. Arranged as follows :—Agreements, Memoranda and Articles of Association, Prospectus, Resolutions, Notices, Certificates, Debentures, Petitions, Orders, Reconstruction, Amalgamation, Arrangements, Private Acts. With Copious Notes. Second Edition. By FRANCIS BEAUFORT PALMER, of the Inner Temple, Esq., Barrister-at-Law. Royal 8vo. 1881. 1l 10s.

"To those concerned in getting up companies, the assistance given by Mr. Palmer must be very valuable, because he does not confine himself to bare precedents, but by intelligent and learned commentary lights up, as it were, each step that he takes."

There is an elaborate index."  
—*Law Times.*

"To those who are acquainted with the first edition we recommend the second edition as a great improvement."  
—*Law Journal.*

**Prideaux's Precedents in Conveyancing.**—With Dissertations on its Law and Practice. Twelfth Edition. Thoroughly revised and adapted to the Conveyancing Acts, 1881, 1882, the Settled Land Act, 1882, the Married Women's Property Act, 1882, and the Bills of Sale Act, 1882. By FREDERICK PRIDEAUX, late Professor of the Law of Real and Personal Property to the Inns of Court, and JOHN WHITCOMBE, Esq., Barristers-at-Law. 2 vols. Royal 8vo. 1883. 3l 10s.

"The most useful work out on Conveyancing."  
—*Law Journal.*

"This work is accurate, concise, clear, and comprehensive in scope, and we know of no treatise upon conveyancing which is so generally useful to the practitioner."  
—*Law Times.*

"The conciseness and scientific precision of these Precedents of the Future are at once pleasing and startling. . . . The Valuable Dissertations on the law and practice, which have always formed a feature of these volumes, have been revised thoroughly."  
—*Law Magazine.*

"The student who, in good time before his examination, can peruse these most valuable dissertations and refer to some of the precedents will have an immense advantage over those who have not done so."  
—*Law Students' Journal.*

\* \* *All standard Law Works are kept in Stock, in law calf and other bindings.*

**CONVICTIONS.**—Paley's Law and Practice of Summary Convictions under the Summary Jurisdiction Acts, 1848 and 1879; including Proceedings preliminary and subsequent to Convictions, and the responsibility of convicting Magistrates and their Officers, with Forms. Sixth Edition. By W. H. MACNAMARA, Esq., Barrister-at-Law. Demy 8vo. 1879. 11. 4s.

Templer.—*Vide* "Summary Convictions."

Wigram.—*Vide* "Justice of the Peace."

**CORONERS.**—Jervis on the Office and Duties of Coroners.—With Forms and Precedents. Fourth Edition. By R. E. MELSHIMER, Esq., Barrister-at-Law. Post 8vo. 1880. 12s.

**COSTS.**—Morgan and Wurtzburg's Treatise on the Law of Costs in the Chancery Division of the High Court of Justice.—Being the Second Edition of Morgan and Davey's Costs in Chancery. With an Appendix, containing Forms and Precedents of Bills of Costs. By the Right Hon. GEORGE OSBORNE MORGAN, one of Her Majesty's Counsel, Her Majesty's Judge Advocate General, and E. A. WURTZBURG, of Lincoln's Inn, Esq., Barrister-at-Law. Demy 8vo. 1882. 30s.

"Cannot fail to be of use to solicitors and their Chancery managing clerks."—*Law Times*.

Scott's Costs in the High Court of Justice and other Courts. Fourth Edition. By JOHN SCOTT, of the Inner Temple, Esq., Barrister-at-Law, Reporter of the Common Pleas Division. Demy 8vo. 1880. 11. 6s.

"Mr. Scott's introductory notes are very useful, and the work is now a compendium on the law and practice regarding costs, as well as a book of precedents."—*Law Times*.

Scott's Costs in Bankruptcy and Liquidation under the Bankruptcy Act, 1869. Royal 12mo. 1878. Net, 3s.

Summerhays and Toogood's Precedents of Bills of Costs in the Chancery and Queens' Bench Divisions of the High Court of Justice, in Conveyancing, Bankruptcy, the Crown Office, Lunacy, Arbitration under the Lands Clauses Consolidation Act, the Mayor's Court, London; the County Courts, the Privy Council, and on Passing Residuary and Succession Accounts; with Scales of Allowances and Court Fees, the Law Society's Scale of Commission in Conveyancing; Forms of Affidavits of Increase, and Objections to Taxation. By WM. FRANK SUMMERHAYS, Solicitor, and THORNTON TOOGOOD. Fourth Edition. (*In preparation.*)

Webster's Parliamentary Costs.—Private Bills, Election Petitions, Appeals, House of Lords. By EDWARD WEBSTER, Esq., of the Taxing and Examiners' Office. Fourth Edition. By C. CAVANAGH, Esq., Barrister-at-Law. Author of "The Law of Money Securities." Post 8vo. 1881. 20s.

"This edition of a well known work is in great part a new publication; and it contains, now printed for the first time, the Table of Fees charged at the House of Lords. . . . We do not doubt that Parliamentary agents will find the work eminently useful."—*Law Journal*

\* \* All standard Law Works are kept in Stock, in law calf and other bindings.

**COUNTY COURTS.**—Pitt-Lewis' County Court Practice.—A Complete Practice of the County Courts, including Admiralty and Bankruptcy, embodying the Acts, Rules, Forms and Costs, with Additional Forms and a Full Index. Second Edition. By G. PITT-LEWIS, of the Middle Temple and Western Circuit, Esq., Barrister-at-Law, sometime Holder of the Studentship of the Four Inns of Court, assisted by H. A. DE COLYAR, Esq., Barrister-at-Law. In 2 parts. Demy 8vo. 1883. 2l. 10s.

\*.\* Part I., with Table of Cases, Index, &c., sold separately, price 30s.

☞ This Edition deals fully with the Employers' Liability Act, and is the only County Court Practice which contains the County Courts (Costs and Salaries) Act, 1882, the important legislation (as to Married Women's Property, Bills of Sale, Inferior Courts' Judgments, &c.) of the Session of 1882, and also the County Court Rules of March, 1883.

"It is very clearly written, and is always practical. The Index is very elaborate, and there is an excellent tabular Index to the County Court Acts and Rules."—*Solicitors' Journal*.

"One of the best books of practice which is to be found in our legal literature."—*Law Times*.

"We have rarely met with a work displaying more honest industry on the part of the author than the one before us."—*Law Journal*.

"Mr. Pitt-Lewis has, in fact, aimed—and we are glad to say successfully—at providing for the County Courts' practitioner what 'Chitty's Archbold' and 'Daniell's Chancery Practice' have long been to practitioners in the High Court."—*Law Magazine*.

"Mr. Pitt-Lewis's work was at once admitted by the profession to the rank of a standard authority, and it must be now generally looked upon as the complete County Court Practice."—*City Press*.

**CRIMINAL LAW.**—Archbold's Pleading and Evidence in Criminal Cases.—With the Statutes, Precedents of Indictments, &c., and the Evidence necessary to support them. Twentieth Edition. By WILLIAM BRUCE, Esq., Barrister-at-Law, and Stipendiary Magistrate for the Borough of Leeds.

(In the press.)

Roscoe's Digest of the Law of Evidence in Criminal Cases.—Ninth Edition. By HORACE SMITH, Esq., Barrister-at-Law. Royal 12mo. 1878. 1l. 11s. 6d.

Russell's Treatise on Crimes and Misdemeanors.—Fifth Edition. By SAMUEL PRENTICE, Esq., one of Her Majesty's Counsel. 8 vols. Royal 8vo. 1877. 5l. 15s. 6d.

"What better Digest of Criminal Law could we possibly hope for than 'Russell on Crimes?' "—*Mr. James Fitzjames Stephen's Speech on Codification*.

"Alterations have been made in the arrangement of the work which without interfering with the general plan are sufficient to show that great care and thought have been bestowed. . . . We are amazed at the patience, industry and skill which are exhibited in the collection and arrangement of all this mass of learning."—*The Times*.

Shirley's Sketch of the Criminal Law.—By W. SHIRLEY SHIRLEY, M.A., Esq., Barrister-at-Law, Author of "Leading Cases made Easy," assisted by C. M. ATKINSON, M.A., B.O.L., Esq., Barrister-at-Law. Demy 8vo. 1880. 7s. 6d.

"As a primary introduction to Criminal Law, it will be found very acceptable to Students."—*Law Students' Journal*.

**DECREES.**—Seton.—*Vide* "Equity."

\*.\* All standard Law Works are kept in Stock, in law calf and other bindings.

**DIARY.**—**Lawyer's Companion (The), Diary, and Law Directory for 1883.**—For the use of the Legal Profession, Public Companies, Justices, Merchants, Estate Agents, Auctioneers, &c., &c. Edited by JOHN THOMPSON, of the Inner Temple, Esq., Barrister-at-Law; and contains Costs in Conveyancing and business other than in any Action, Court, or Chambers, General Charges in Conveyancing, before 1st January, 1883; a Digest of Useful Decisions on Costs; Monthly Diary of County, Local Government, and Parish Business; Oaths in Supreme Court; Summary of Legislation of 1882; Alphabetical Index to the Practical Statutes; a Copious Table of Stamp Duties; Legal Time, Interest, Discount, Income, Wages and other Tables; Probate, Legacy and Succession Duties; and a variety of matters of practical utility. PUBLISHED ANNUALLY. Thirty-seventh Issue.

Contains the most complete List published of the English Bar, and London and Country Solicitors, with date of admission and appointments, and is issued in the following forms, octavo size, strongly bound in cloth:—

	s.	d.
1. Two days on a page, plain . . . . .	5	0
2. The above, INTERLEAVED for ATTENDANCES . . . . .	7	0
3. Two days on a page, ruled, with or without money columns . . . . .	5	6
4. The above, INTERLEAVED for ATTENDANCES . . . . .	8	0
5. Whole page for each day, plain . . . . .	7	6
6. The above, INTERLEAVED for ATTENDANCES . . . . .	9	6
7. Whole page for each day, ruled, with or without money cols. . . . .	8	6
8. The above, INTERLEAVED for ATTENDANCES . . . . .	10	6
9. Three days on a page, ruled blue lines, without money cols. . . . .	5	0

*The Diary contains memoranda of Legal Business throughout the Year.*

"An excellent work."—*The Times*.

"A publication which has long ago secured to itself the favour of the profession, and which, as heretofore, justifies by its contents the title assumed by it."—*Law Journal*.

"Contains all the information which could be looked for in such a work, and gives it in a most convenient form and very completely. We may unhesitatingly recommend the work to our readers."—*Solicitors' Journal*.

"The 'Lawyer's Companion and Diary' is a book that ought to be in the possession of every lawyer, and of every man of business."

"The 'Lawyer's Companion' is, indeed, what it is called, for it combines everything required for reference in the lawyer's office."—*Law Times*.

"It is a book without which no lawyer's library or office can be complete."—*Irish Law Times*.

**DICTIONARY.**—**Student's (The) Pocket Law Lexicon, or Dictionary of Jurisprudence.** Explaining Technical Words and Phrases used in English Law, together with a Literal Translation of Latin Maxims. Fcp. 8vo. 1882. 6s.

"A wonderful little legal Dictionary."—*Indermaw's Law Students' Journal*.

"A very handy, complete, and useful little work."—*Saturday Review*.

**Wharton's Law Lexicon.**—Forming an Epitome of the Law of England, and containing full explanations of the Technical Terms and Phrases thereof, both Ancient and Modern; including the various Legal Terms used in Commercial Business. Together with a Translation of the Latin Law Maxims and selected Titles from the Civil, Scotch and Indian Law. Seventh Edition. By J. M. LELY, Esq., M.A., Barrister-at-Law, Editor of "Woodfall's Landlord and Tenant," "Chitty's Statutes," &c. Super-royal 8vo. 1883. 11. 18s.

"On almost every point both student and practitioner can gather information from this invaluable book, which ought to be in every lawyer's office."—*Gibson's Law Notes*, May, 1883.

"As it now stands the Lexicon contains all it need contain, and to those who value such a work it is made more valuable still."—*Law Times*, June 2, 1883.

\* \* All standard Law Works are kept in Stock, in law calf and other bindings.

**DIGESTS.—Bedford.—Vide "Examination Guides."**

**Chitty's Index to all the Reported Cases** decided in the several Courts of Equity in England, the Privy Council, and the House of Lords, with a selection of Irish Cases, on or relating to the Principles, Pleading, and Practice of Equity and Bankruptcy; from the earliest period. The Fourth Edition, wholly revised, reclassified and brought down to the date of publication by WILLIAM FRANK JONES, B.C.L., M.A., and HENRY EDWARD HIRST, B.C.L., M.A., both of Lincoln's Inn, Esqrs., Barristers-at-Law. Roy. 8vo. 1883. Vol. 1. 1*l.* 11*s.* 6*d.*

\* \* Volume I. contains the Titles "Abandonment" to "Bankruptcy." The Title Bankruptcy is a Complete Digest of all cases, including the Decisions at Common Law.

Volume II. is in the press, and will be issued shortly.

The Work will be completed in 5 or 6 Volumes.

**Notanda Digest in Law, Equity, Bankruptcy, Admiralty, Divorce, and Probate Cases.**—By H. TUDOR BODDAM, of the Inner Temple, and HARRY GREENWOOD and E. W. D. MANSON, of Lincoln's Inn, Esqrs., Barristers-at-Law.

Third Series, 1878 to 1876 inclusive, half-bound. Net, 1*l.* 11*s.* 6*d.*

Ditto, Fourth Series, for the years 1877, 1878, 1879, 1880, 1881, and 1882, with Index. Each, net, 1*l.* 1*s.*

Ditto, ditto, for 1883. By E. W. D. MANSON and PROCTER T. PULMAN, Esqrs., Barristers-at-Law. Plain Copy and Two Indexes, or Adhesive Copy for insertion in Text-Books (without Index). Annual Subscription, payable in advance. Net, 2*l.*

\* \* The numbers are issued regularly every month. Each number contains a concise analysis of every case reported in the *Law Reports*, *Law Journal*, *Weekly Reporter*, *Law Times*, and the *Irish Law Reports*, up to and including the cases contained in the parts for the current month, with references to Text-books, Statutes, and the *Law Reports Consolidated Digest*, and an ALPHABETICAL INDEX of the subjects contained in each number.

**DISCOVERY.—Hare's Treatise on the Discovery of Evidence.**—Second Edition. Adapted to the Procedure in the High Court of Justice, with Addenda, containing all the Reported Cases to the end of 1876. By SHERLOCK HARE, Barrister-at-Law. Post 8vo. 1877. 12*s.*

"The book is a useful contribution to our text-books on practice."—*Solicitors' Journal*.

**Sichel and Chance's Discovery.**—The Law relating to Interrogatories, Production, Inspection of Documents, and Discovery, as well in the Superior as in the Inferior Courts, together with an Appendix of the Acts, Forms and Orders. By WALTER S. SICHEL, M.A., and WILLIAM CHANCE, M.A., Esqrs., Barristers-at-Law. Demy 8vo. 1883. 12*s.*

"The work will, we think, be very useful in practice, and may be confidently recommended for use in judges' chambers."—*Law Times*, April 28, 1883.

"It will be of much use to practitioners to be able to find, as we do in the work before us, an intelligent account of the whole set of decisions."—*Solicitors' Journal*, April 28, 1883.

"It is evident that this work is the result of much careful and painstaking research, and we can confidently recommend it as a careful and convenient compendium, and particularly as likely to be of material assistance to those who are much engaged in judges' chambers or in the county courts."—*Law Magazine*.

**Seton.**—Vide "Equity."

\* \* All standard Law Works are kept in Stock, in law calf and other binding.

**DIVORCE.**—Browne's Treatise on the Principles and Practice of the Court for Divorce and Matrimonial Causes:—With the Statutes, Rules, Fees and Forms relating thereto. Fourth Edition. By GEORGE BROWNE, Esq., Barrister-at-Law. Demy 8vo. 1880. 1*l*. 4*s*.

"The book is a clear, practical, and, so far as we have been able to test it, accurate exposition of divorce law and procedure."—*Solicitors' Journal*.

**DOMICIL.**—Dicey on the Law of Domicil as a branch of the Law of England, stated in the form of Rules.—By A. V. DICEY, B.C.L., Barrister-at-Law. Author of "Rules for the Selection of Parties to an Action." Demy 8vo. 1879. 18*s*.

"The practitioner will find the book a thoroughly exact and trustworthy summary of the present state of the law."—*The Spectator*.

**EASEMENTS.**—Goddard's Treatise on the Law of Easements.—By JOHN LEYBOURN GODDARD, Esq., Barrister-at-Law. Second Edition. Demy 8vo. 1877. 16*s*.

"The book is invaluable: where the cases are silent the author has taken pains to ascertain what the law would be if brought into question."—*Law Journal*.

"Nowhere has the subject been treated so exhaustively, and, we may add, so scientifically, as by Mr. Goddard. We recommend it to the most careful study of the law student, as well as to the library of the practitioner."—*Law Times*.

**ECCLESIASTICAL LAW.**—Dodd's Burial and other Church Fees and the Burial Act, 1880:—With Notes. By J. T. DODD, M.A., Barrister-at-Law. Royal 12mo. 1881. 4*s*.

Phillimore's (Sir R.) Ecclesiastical Law.—The Ecclesiastical Law of the Church of England. With Supplement, containing the Statutes and Decisions to end of 1875. By SIR ROBERT PHILLIMORE, D.C.L., Official Principal of the Archdeaconry of Canterbury; Member of Her Majesty's Most Honourable Privy Council. 2 vols. 8vo. 1873-76. 3*l*. 7*s*. 6*d*.

\* \* The Supplement may be had separately, price 4*s*. 6*d*., sewed.

**ELECTIONS.**—FitzGerald.—*Vide* "Ballot."

**Rogers on Elections, Registration, and Election Agency.**—Thirteenth Edition, including PERMITS and Municipal Elections and Registration. With an Appendix of Statutes and Forms. By JOHN CORRIE CARTER, of the Inner Temple, Esq., Barrister-at-Law. Royal 12mo. 1880. 1*l*. 12*s*.

"Petition has been added, setting forth the procedure and the decisions on that subject; and the statutes passed since the last edition are explained down to the Parliamentary Elections and Corrupt Practices Act (1880)."—*The Times*.

"We have no hesitation in commending the book to our readers as a useful and adequate treatise upon election law."—*Solicitors' Journal*.

"A book of long standing and for information on the common law of elections, of which it contains a mine of extracts from and references to the older authorities, will always be resorted to."—*Law Journal*.

**ELECTRIC LIGHTING.**—Cunynghame's Treatise on the Law of Electric Lighting, with the Acts of Parliament, and Rules and Orders of the Board of Trade, a Model Provisional Order, and a set of Forms, to which is added a Description of the Principal Apparatus used in Electric Lighting, with Illustrations. By HENRY CUNYNGHAME, Barrister-at-Law. Royal 8vo. 1883. 12*s*. 6*d*.

"As an original work it demands especial praise, and we congratulate Mr. Cunynghame on his production."—*Law Times*.

"Among the many works upon electric lighting which have come before us, we think that Mr. Cunynghame's cannot fail to gain and keep a high place."—*Solicitors' Journal*.

**EMPLOYERS' LIABILITY ACT.**—Macdonell.—*Vide* "Master and Servant."

Smith.—*Vide* "Negligence."

\* \* All standard Law Works are kept in Stock, in law calf and other bindings.

**EQUITY, and *Vide* CHANCERY.****Chitty's Index.**—*vide* "Equity."**Seton's Forms of Decrees, Judgments, and Orders in the High Court of Justice and Courts of Appeal,** having especial reference to the Chancery Division, with Practical Notes. Fourth Edition. By R. H. LEACH, Esq., Senior Registrar of the Chancery Division; F. G. A. WILLIAMS, of the Inner Temple, Esq.; and the late H. W. MAY, Esq.; succeeded by JAMES EASTWICK, of Lincoln's Inn, Esq., Barrister-at-Law. 2 vols. in 3 parts. Royal 8vo. 1877—79. 4l. 10s.

\* \* Vol. II., Parts 1 and 2, separately, price each 1l. 10s.

"The Editors of this new edition of Seton deserve much praise for what is almost, if not absolutely, an innovation in law books. In treating of any division of their subject they have put prominently forward the result of the latest decisions, settling the law so far as it is ascertained, thus avoiding much useless reference to older cases. . . . There can be no doubt that in a book of practice like Seton, it is much more important to be able to see at once what the law is than to know how it has become what it is; and the Editors have evidently taken great pains to carry out this principle in presenting the law on each division of their labours to their readers."—*The Times*.

"Of all the editions of 'Seton' this is the best. . . . We can hardly speak too highly of the industry and intelligence which have been bestowed on the preparation of the notes."—*Solicitors' Journal*.

"Now the book is before us complete; and we advisedly say complete, because it has scarcely ever been our fortune to see a more complete law book than this. Extensive in sphere, and exhaustive in treatise, comprehensive in matter, yet apposite in details, it presents all the features of an excellent work. . . . The index, extending over 578 pages, is a model of comprehensiveness and accuracy."—*Law Journal*.

**Smith's Manual of Equity Jurisprudence.**—

A Manual of Equity Jurisprudence for Practitioners and Students, founded on the Works of Story, Spence, and other writers, and on more than a thousand subsequent cases, comprising the Fundamental Principles and the points of Equity usually occurring in General Practice. By JOSIAH W. SMITH, B.C.L., Q.C. Thirteenth Edition. 12mo. 1880. 12s. 6d.

"There is no disguising the truth; the proper mode to use this book is to learn its pages by heart."—*Law Magazine and Review*.

"It will be found as useful to the practitioner as to the student."—*Solicitors' Journal*.

**Smith's Practical Exposition of the Principles of Equity,** illustrated by the Leading Decisions thereon. For the use of Students and Practitioners. By H. ARTHUR SMITH, M.A., LL.B., of the Middle Temple, Esq., Barrister-at-Law. Demy 8vo. 1882. 20s.

"The book seems to us to be one of great value to students."—*Solicitors' Journal*.

"In a moderately-sized volume, such as no lawyer who has his own advantage in view could object to 'read, mark, learn, and inwardly digest,' Mr. Smith sets forth succinctly and in due order all the fundamental principles administered by Courts of Equity, showing how they have by recent enactment been engrafted on the Common Law, and carefully abstaining from overlaying his subject-matter with multifarious details of practice which might tend to confuse and mystify. . . . We must again state our opinion that this is a most remarkable book, containing in a reasonable space more information, and that better arranged and conveyed, than almost any other law book of recent times which has come under our notice."—*Saturday Review*.

**EXAMINATION GUIDES.**—**Bedford's Guide to the Preliminary Examination for Solicitors.**—Fourth Edition. 12mo. 1874. 7s. 2s.

**Bedford's Digest of the Preliminary Examination Questions in Latin Grammar, Arithmetic, French Grammar, History and Geography, with the Answers.** Second Edition. Demy 8vo. 1882. 18s.

**Bedford's Preliminary Guide to Latin Grammar.**—12mo. 1872. 7s. 2s.

**Bedford's Student's Guide to Smith on Contracts.** Demy 8vo. 1879. 2s. 6d.

\* \* All standard Law Works are kept in Stock, in law calf and other bindings.

**EXAMINATION GUIDES.—Continued.**

**Bedford's Final Examination Guide to Bankruptcy.—Fourth Edition.** (In preparation.)

**Bedford's Student's Guide to the Eighth Edition of Stephen's New Commentaries on the Laws of England.—Second Edition.** Demy 8vo. 1881. 12s.

"Here is a book which will be of the greatest service to students. It reduces the 'Commentaries' to the form of question and answer . . . We must also give the author credit, not only for his selection of questions, but for his answers thereto. These are models of fulness and conciseness, and lucky will be the candidate who can hand in a paper of answers bearing a close resemblance to those in the work before us."—*Law Journal*.

**Bedford's Final Examination Digest:** containing a Digest of the Final Examination Questions in matters of Law and Procedure determined by the Chancery, Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice, and on the Law of Real and Personal Property and the Practice of Conveyancing, with the Answers. 8vo. 1879. 16s.

"Will furnish students with a large armoury of weapons with which to meet the attacks of the examiners of the Incorporated Law Society."—*Law Times*.

**Shearwood's Law Student's Annual.—**Containing the Questions with Answers to the Solicitor's and Bar Examinations (Michaelmas Term, 1881, to Trinity Term, 1882, inclusive), with Remarks and Comments. A list of Books suggested for Students, the Rules for the Solicitors' and Bar Examinations, 1883, and the Scholarships, etc., at the different Inns of Court, Cases and Statutes, Extracts from Law Students' Debating Societies, and a subject for Prize Essays. Edited by JOSEPH A. SHEARWOOD, Esq., Barrister-at-Law, Author of "A Concise Abridgment of Real Property," and of "Personal Property," etc. Demy 8vo. 1882. 5s.

"This is a book of a thorough character. . . . Much care and labour have evidently been expended on the book, which will be found of great advantage to students."—*Law Journal*.

"We know of no other manual which contains the same quantity of information in such a concise form."—*Solicitors' Journal*.

"The remarks on the examinations are very interesting, and there are some valuable hints as to what books the candidate for honours and a pass respectively should use."—*Gibson's Law Notes*.

**Shearwood's Student's Guide to the Bar, the Solicitor's Intermediate and Final and the Universities Law Examinations.—**With Suggestions as to the books usually read, and the passages therein to which attention should be paid. By JOSEPH A. SHEARWOOD, B.A., Esq., Barrister-at-law. 8vo. 1879. 5s. 6d.

"Any student of average intelligence who conscientiously follows the path and obeys the instructions given him by the author, need not fear to present himself as a candidate for any of the examinations to which this book is intended as a guide."—*Law Journal*.

**EXECUTORS.—Macaskie's Treatise on the Law of Executors and Administrators, and of the Administration of the Estates of Deceased Persons.** With an Appendix of Statutes and Forms. By STUART CUNNINGHAM MACASKIE, of Gray's Inn, Esq., Barrister-at-Law. 8vo. 1881. 10s. 6d.

"An able summary of the law of administration, now forming one of the subjects set for the general examination for call to the bar."

"Students may read the book with advantage as an introduction to 'Williams,' and by practitioners not possessing the larger work it would undoubtedly be found useful."—*Law Journal*.

\*.\* All standard Law Works are kept in Stock, in law calf and other bindings.



**EXECUTORS.**—*Continued.*

**Williams' Law of Executors and Administrators.**—By the Rt. Hon. Sir EDWARD VAUGHAN WILLIAMS, late one of the Judges of Her Majesty's Court of Common Pleas. Eighth Edition. By WALTER VAUGHAN WILLIAMS and ROLAND VAUGHAN WILLIAMS, Esqrs., Barristers-at-Law. 2 vols. Royal 8vo. 1879. 3l. 16s.

"A treatise which occupies an unique position and which is recognised by the Bench and the profession as having paramount authority in the domain of law with which it deals."—*Law Journal.*

**EXTRADITION.**—Kirchner's *L'Extradition.*—Recueil Renfermant in Extenso tous les Traités conclus jusqu'au 1er Janvier, 1883, entre les Nations civilisées, et donnant la solution précise des difficultés qui peuvent surgir dans leur application. Avec une Préface de McGEORGES LACHAUD, Avocat à la Cour d'Appel de Paris. Publié sous les auspices de M. C. E. HOWARD VINCENT, Directeur des Affaires Criminelles de la Police Métropolitaine de Londres; Membre de la Faculté de Droit et de la Société Générale des Prisons de Paris. Par F. J. KIRCHNER, Attaché à la Direction des Affaires Criminelles. In 1 vol. (1150 pp.) Royal 8vo. 2l. 2s.

**FACTORY ACTS.**—Notcutt's Law relating to Factories and Workshops. Second Edition. 12mo. 1879. 9s.

**FARM, LAW OF.**—Addison; Cooke.—*Vide* "Agricultural Law."

**Dixon's Law of the Farm.**—A Digest of Cases connected with the Law of the Farm, and including the Agricultural Customs of England and Wales. Fourth Edition. By HENRY PERKINS, Esq., Barrister-at-Law and Midland Circuit. Demy 8vo. 1879. 1l. 6s.

"It is impossible not to be struck with the extraordinary research that must have been used in the compilation of such a book as this."—*Law Journal.*

**FOREIGN JUDGMENTS.**—Piggott's Foreign Judgments their effect in the English Courts. Part I. The English Doctrine, Defences, Judgments in Rem. Status.—By F. T. PIGGOTT, M.A., LL.M., of the Middle Temple, Esq., Barrister-at-Law. Royal 8vo. 1879. 15s.

Part II.—The Effect of an English Judgment Abroad. Service on Absent Defendants. Royal 8vo. 1881. 15s.

**FORMS.**—Allen.—*Vide* "Pleading."

Archibald.—*Vide* "Judges' Chambers Practice."

Bullen and Leake.—*Vide* "Pleading."

**Chitty's Forms of Practical Proceedings in the Queen's Bench, Common Pleas and Exchequer Divisions of the High Court of Justice:** with Notes containing the Statutes, Rules and Practice relating thereto. Eleventh Edition. By THOS. WILLES CHITTY, Esq., Barrister-at-Law. Demy 8vo. 1879. 1l. 18s.

**Daniell's Forms and Precedents of Proceedings in the Chancery Division of the High Court of Justice and on Appeal therefrom;** with Dissertations and Notes, forming a complete guide to the Practice of the Chancery Division of the High Court and of the Courts of Appeal. Being the Third Edition of "Daniell's Chancery Forms." By WILLIAM HENRY UPJOHN, Esq., of Gray's Inn, &c., &c. Demy 8vo. 1879. 2l. 2s.

"Mr Upjohn has restored the volume of Chancery Forms to the place it held before the recent changes, as a trustworthy and complete collection of precedents."—*Solicitors' Journal.*

"It will be as useful a work to practitioners at Westminster as it will be to those in Lincoln's Inn."—*Law Times.*

\* \* \* All standard Law Works are kept in Stock, in law calf and other bindings.

**FRENCH COMMERCIAL LAW.**—Goirand.—*Vide* "Commercial Law."

**HIGHWAYS.**—Baker's Law of Highways in England and Wales, including Bridges and Locomotives. Comprising a succinct code of the several provisions under each head, the statutes at length in an Appendix; with Notes of Cases, Forms, and copious Index. By THOMAS BAKER, of the Inner Temple, Esq., Barrister-at-Law. Royal 12mo. 1880. 15s.

"This is distinctly a well-planned book, and cannot fail to be useful, not only to lawyers, but to those who may be locally engaged in the management of highways."—*Law Journal*.

"The general plan of Mr. Baker's book is good. He groups together condensed statements of the effect of the provisions of the different Highway Acts relating to the same matter, giving in all cases references to the sections, which are printed in full in the appendix. To each condensed section, or group of sections, he appends a note, stating concisely the effect of the decisions."—*Solicitors' Journal*.

**Chambers' Law relating to Highways and Bridges**, being the Statutes in full and brief Notes of 700 Leading Cases; together with the Lighting Act, 1833. By GEO. F. CHAMBERS, Esq., Barrister-at-Law. 1878. 12s.

**INJUNCTIONS.**—Seton.—*Vide* "Equity."

**INLAND REVENUE CASES.**—Highmore's Summary Proceedings in Inland Revenue Cases in England and Wales. By NATHANIEL JOSEPH HIGHMORE, of the Middle Temple, Esq., Barrister-at-Law, and of the Inland Revenue Department. Royal 12mo. 1882. 6s.

"A complete treatise on procedure applied to cases under the Revenue Act, and as a book of practice it is the best we have seen."—*The Justice of the Peace*, Jan. 23, 1882.

**INSURANCE.**—Arnould on the Law of Marine Insurance.—Fifth Edition. By DAVID MACLAHLAN, Esq., Barrister-at-Law. 2 vols. Royal 8vo. 1877. 3l.

"As a text book, 'Arnould' is now all the practitioner can want, and we congratulate the editor upon the skill with which he has incorporated the new decisions."—*Law Times*.

**Lowndes on the Law of Marine Insurance.**—A Practical Treatise. By RICHARD LOWNDES. Author of "The Law of General Average," &c. Second Edition. (*In preparation*.)

"It is rarely, indeed, that we have been able to express such unqualified approval of a new legal work."—*Solicitors' Journal*.

**INTERNATIONAL LAW.**—Amos' Lectures on International Law.—By SHELDON AMOS, M.A., Professor of Jurisprudence (including International Law) to the Inns of Court, &c. Royal 8vo. 1874. 10s. 6d.

Dicey.—*Vide* "Domestic."

**Kent's International Law.**—Kent's Commentary on International Law. Edited by J. T. ABDY, LL.D., Judge of County Courts. Second Edition. Revised and brought down to the present time. Crown 8vo. 1878. 10s. 6d.

"Altogether Dr. Abdy has performed his task in a manner worthy of his reputation. His book will be useful not only to Lawyers and Law Students, for whom it was primarily intended, but also for laymen."—*Solicitors' Journal*.

**Levi's International Commercial Law.**—Being the Principles of Mercantile Law of the following and other Countries—viz.: England, Ireland, Scotland, British India, British Colonies, Austria, Belgium, Brazil, Buenos Ayres, Denmark, France, Germany, Greece, Hans Towns, Italy, Netherlands, Norway, Portugal, Prussia, Russia, Spain, Sweden, Switzerland, United States, and Württemberg. By LEONE LEVI, Esq., F.S.A., F.S.S., Barrister-at-Law, &c. Second Edition. 2 vols. Royal 8vo. 1863. 1l. 15s.

\* \* All standard Law Works are kept in Stock, in law calf and other bindings.

**INTERNATIONAL LAW.**—*Continued.*

**Vattel's Law of Nations.**—By JOSEPH CHITTY, Esq.  
Royal 8vo. 1834. 11. 1s.

**Wheaton's Elements of International Law;**  
Second English Edition. Edited with Notes and Appendix of  
Statutes and Treaties, bringing the work down to the present time.  
By A. C. BOYD, Esq., LL.B., J.P., Barrister-at-Law. Author of  
"The Merchant Shipping Laws." Demy 8vo. 1880. 11. 10s.

"Mr. Boyd, the latest editor, has added many useful notes; he has inserted in the Appendix public documents of permanent value, and there is the prospect that, as edited by Mr. Boyd, Mr. Wheaton's volume will enter on a new lease of life."—*The Times*.

"Both the plan and execution of the work before us deserves commendation. The text of Wheaton is presented without alteration, and Mr. Dana's numbering of the sections is preserved. . . . The Index, which could not have been compiled without much thought and labour, makes the book handy for reference."—*Law Journal*.

"Students who require a knowledge of Wheaton's text will find Mr. Boyd's volume very convenient."—*Law Magazine*.

**INTERROGATORIES.**—Sichel and Chance.—*vide* "Discovery."

**JOINT OWNERSHIP.**—Foster.—*Vide* "Real Estate."

**JOINT STOCKS.**—Palmer.—*Vide* "Conveyancing" and "Company Law."

**Thring's (Sir H.) Joint Stock Companies' Law.**—

The Law and Practice of Joint Stock and other Companies, including the Companies Acts, 1862 to 1880, with Notes, Orders, and Rules in Chancery, a Collection of Precedents of Memoranda and Articles of Association, and all the other Forms required in Making, Administering, and Winding-up a Company; also the Partnership Law Amendment Act, The Life Assurance Companies Acts, and other Acts relating to Companies. By SIR HENRY THRING, K.C.B., The Parliamentary Counsel. Fourth Edition. By G. A. R. FITZGERALD, Esq., M.A., Barrister-at-Law. Demy 8vo. 1880. 11. 5s.

"This, as the work of the original draughtsman of the Companies' Act of 1862, and well-known Parliamentary counsel, Sir Henry Thring, is naturally the highest authority on the subject."—*The Times*.

"One of its most valuable features is its collection of precedents of Memoranda and Articles of Association, which has, in this Edition, been largely increased and improved."—*Law Journal*.

**Jordan's Joint Stock Companies.**—A Handy Book of Practical Instructions for the Formation and Management of Joint Stock Companies. Seventh Edition. 12mo. 1881. Net, 2s. 6d.

**JUDGES' CHAMBERS PRACTICE.**—Archibald's Forms of Summonses and Orders, with Notes for use at Judges' Chambers and in the District Registries. Second Edition. By W. F. A. ARCHIBALD, M.A., Barrister-at-Law. (*In preparation.*)

"The work is done most thoroughly and yet concisely. The practitioner will find plain directions how to proceed in all the matters connected with a common law action, interpleader, attachment of debts, *mandamus*, injunction—indeed, the whole jurisdiction of the common law divisions, in the district registries, and at Judges chambers."—*Law Times*.

"A clear and well-digested *tracé mécanique*, which will no doubt be widely used by the profession."—*Law Magazine*.

**JUDGMENTS.**—Piggott.—*Vide* "Foreign Judgments."

**Walker's Practice on Signing Judgment in the High Court of Justice.** With Forms. By H. H. WALKER, Esq., of the Judgment Department, Exchequer Division. Crown 8vo. 1879. 4s. 6d.

"The book undoubtedly meets a want, and furnishes information available for almost every branch of practice."

"We think that solicitors and their clerks will find it extremely useful."—*Law Journal*.

\* \* All standard Law Works are kept in Stock, in law calf and other bindings.

**JUDICATURE ACTS.**—**Whiteway's Hints on Practice**; or Practical Notes on the Judicature Acts, Orders, Rules and Regulations of the Supreme Court. Illustrated by the Latest Cases. Together with the Rules of the Supreme Court, 1883. With an Introduction, References, Notes, and Index. By A. R. WHITEWAY, M.A., of the Equity Bar and Midland Circuit, Author of "Hints to Solicitors." Second Edition. Royal 12mo. 1883. 14s.  
Sold separately "Hints on Practice," with Cases and Index, 7s. 6d.  
The Rules, edited with Notes, Cross References, and Index, *limp leather*, 7s. 6d.

\* \* \* *A very handy, portable size.*

**Wilson's Supreme Court of Judicature Acts, Rules of the Supreme Court, 1883, and Forms.** With other Acts, Orders, Rules and Regulations relating to the Supreme Court. With Practical Notes. Fourth Edition. By M. D. CHALMERS, of the Inner Temple, and M. MUIR MACKENZIE, of Lincoln's Inn, Barristers-at-Law. Royal 12mo. 1883. 25s.

(Nearly ready.)

\* \* \* *A large paper edition for marginal notes. Royal 8vo. 1883. 30s.*

**OPINIONS OF THE PRESS ON THE THIRD EDITION.**

"Numerous as have been the publications dealing with the practice under the Judicature Acts, this volume has retained its hold and is the popular practice."—*Law Times*.

"We have missed no case for which we have looked, and have found the effect of the decisions stated with accuracy and terseness. . . . The index seems to have been entirely remodelled, and is very convenient and well arranged."—*Solicitors' Journal*.

"This well known book, which has been from the first a general favourite in the profession, comes out afresh in this its third edition, under excellent auspices. . . . The result cannot but enhance the already widely acknowledged value of Wilson's 'Judicature Acts.'"—*Law Magazine*.

**JUSTINIAN, INSTITUTES OF.**—Mears.—*Vide* "Roman Law."

**Ruegg's Student's "Auxilium" to the Institutes of Justinian.**—Being a complete synopsis thereof in the form of Question and Answer. By ALFRED HENRY RUEGG, of the Middle Temple, Barrister-at-Law. Post 8vo. 1879. 5s.

"The student will be greatly assisted in clearing and arranging his knowledge by a work of this kind."—*Law Journal*.

**JUSTICE OF THE PEACE.**—Burn's Justice of the Peace and Parish Officer.—Edited under the Superintendence of JOHN BLOSSETT MAULE, Esq., Q.C. The Thirtieth Edition. Five large vols. 8vo. 1869. 7l. 7s.

**Stone's Practice for Justices of the Peace, Justices Clerks and Solicitors at Petty and Special Sessions, in Summary matters, and Indictable Offences, with a list of Summary Convictions, and matters not Criminal. With Forms. Ninth Edition.** By WALTER HENRY MACNAMARA, Esq., Barrister-at-Law. Demy 8vo. 1882. 25s.

"A very creditable effort has been made to condense and abridge, which has been successful, whilst the completeness of the work has not been impaired."—*Law Times*.

**Wigram's Justices' Note Book.**—Containing a short account of the Jurisdiction and Duties of Justices, and an Epitome of Criminal Law. By W. KNOX WIGRAM, Esq., Barrister-at-Law, J.P. Middlesex and Westminster. Third Edition. Corrected and revised to December, 1882. With a copious Index. Royal 12mo. 1883. 12s. 6d.

"We have found in it all the information which a Justice can require as to recent legislation."—*The Times*.

"This is altogether a capital book. Mr. Wigram is a good lawyer and a good justices' lawyer."—*Law Journal*.

"We can thoroughly recommend the volume to magistrates."—*Law Times*.

\* \* \* *All standard Law Works are kept in Stock, in law calf and other bindings.*

**LAND ACT.**—See "Settled Estates."—Middleton.

**LAND TAX.**—Bourdin's Land Tax.—An Exposition of the Land Tax ; its Assessment and Collection, with a statement of the rights conferred by the Redemption Acts. By MARK A. BOURDIN (late Registrar of Land Tax). Second Edition. 1870. 4s.

**LANDLORD AND TENANT.**—Woodfall's Law of Landlord and Tenant.—With a full Collection of Precedents and Forms of Procedure. Containing also an Abstract of Leading Propositions, and Tables of certain Customs of the Country. Twelfth Edition. In which the Precedents of Leases have been revised and enlarged, with the assistance of L. G. G. Robbins, Esq. By J. M. LKLY, Esq., Barrister-at-Law. Royal 8vo. 1881. 11. 18s.

"The editor has expended elaborate industry and systematic ability in making the work as perfect as possible."—*Solicitors' Journal*.

**LANDS CLAUSES ACTS.**—Jepson's Lands Clauses Consolidation Acts; with Decisions, Forms, & Table of Costs. By ARTHUR JEPSON, Esq., Barrister-at-Law. Demy 8vo. 1880. 18s.

"The work concludes with a number of forms and a remarkably good index."—*Law Times*.

"As far as we have been able to discover, all the decisions have been stated, and the effect of them correctly given."—*Law Journal*.

**LAW LIST.**—Law List (The).—Comprising the Judges and Officers of the different Courts of Justice, Counsel, Special Pleaders, Draftsmen, Conveyancers, Solicitors, Notaries, &c., in England and Wales; the Circuits, Judges, Treasurers, Registrars, and High Bailiffs of the County Courts; Metropolitan and Stipendiary Magistrates, Law and Public Officers in England and the Colonies, Foreign Lawyers with their English Agents, Sheriffs, Under-Sheriffs, and their Deputies, Clerks of the Peace, Town Clerks, Coroners, &c., &c., and Commissioners for taking Oaths, Conveyancers Practising in England under Certificates obtained in Scotland. So far as relates to Special Pleaders, Draftsmen, Conveyancers, Solicitors, Proctors and Notaries. Compiled by WILLIAM HENRY COUSINS, of the Inland Revenue Office, Somerset House, Registrar of Stamped Certificates, and of Joint Stock Companies, and Published by the Authority of the Commissioners of Inland Revenue. 1883. (Net Cash, 2s.) 10s. 6d.

**LAW REPORTS.**—A very large Stock of second-hand and new Reports. Prices on application.

**LAW STUDENT'S ANNUAL.**—Vide "Examination Guides."

**LAW SUIT.**—Mr. Bumpkin's Law Suit; or, How to Win your Opponent's Case. By RICHARD HARRIS, Barrister-at-Law, of the Middle Temple and Midland Circuit, Author of "Hints on Advocacy." Royal 12mo. 1883. 6s.

"Most of the standing grievances of suitors find a place in this book."—*Law Times*.

**LAWYER'S COMPANION.**—Vide "Diary."

**LEADING CASES.**—Haynes' Student's Leading Cases. Being some of the Principal Decisions of the Courts in Constitutional Law, Common Law, Conveyancing and Equity, Probate, Divorce, Bankruptcy, and Criminal Law. With Notes for the use of Students. By JOHN F. HAYNES, LL.D. Demy 8vo. 1878. 16s.

"Will prove of great utility, not only to Students, but Practitioners. The Notes are clear, pointed and concise."—*Law Times*.

"We think that this book will supply a want . . . the book is singularly well arranged for reference."—*Law Journal*.

\*. \* All standard Law Works are kept in Stock, in law calf and other bindings.

**LEADING CASES.**—*Continued.*

**Shirley's Leading Cases.**—A Selection of Leading Cases in the Common Law, with Notes. By W. SHIRLEY SHIRLEY, M.A., B.C.L., Esq., Barrister-at-Law. Second Edition. Demy 8vo. 1883. 15s.

"The book is deserving of high praise, and we commend it in all confidence. *Gibson's Law Notes*, April, 1883.

"The selection is very large, though all are distinctly 'leading cases,' and the notes are by no means the least meritorious part of the work."—*Law Journal*.

"Mr. Shirley writes well and clearly, and evidently understands what he is writing about."—*Law Times*.

**LEGACY DUTIES.**—*Vide* "Taxes on Succession."

**LEXICON.**—*Vide* "Dictionary."

**LIBEL AND SLANDER.**—**Odgers on Libel and Slander.**—

A Digest of the Law of Libel and Slander, with the Evidence, Procedure and Practice, both in Civil and Criminal Cases, with Precedents of Pleadings. With Appendix of Statutes including the Newspaper Libel and Registration Act, 1881. By W. BLAKE ODGERS, M.A., LL.D., Barrister-at-Law. Demy 8vo. 1881. 24s.

"We have rarely examined a work which shows so much industry.

So good is the book, which in its topical arrangement is vastly superior to the general run of law books, that criticism of it is a compliment rather than the reverse."—*Law Journal*.

"The excuse, if one be needed, for another book on Libel and Slander, and that an English one, may be found in the excellence of the author's work. A clear head and a skilled hand are to be seen throughout."—*Extract from Preface to American reprint*.

**LIBRARIES AND MUSEUMS.**—**Chambers' Digest of the Law relating to Public Libraries and Museums and Literary and Scientific Institutions generally.** Second Edition. By G. F. CHAMBERS, Barrister-at-Law. Imperial 8vo. 1879. 8s. 6d.

**LICENSING.**—**Hindle's Treatise on the Legal Status of Licensed Victuallers and other License-Holders, as affected by recent Legislation and Decisions;** containing a full Report of the Proceedings and Judgment in the recent Darwen Licensing Appeals, with Notes. Second Edition. By FREDK. G. HINDLE, Esq., Solicitor. Demy 8vo. 1883. *Net, 2s. 6d.*

**Lely and Foulkes' Licensing Acts, 1828, 1869, 1872, and 1874;** containing the Law of the Sale of Liquors by Retail and the Management of Licensed Houses; with Notes to the Acts, a Summary of the Law, and an Appendix of Forms. Second Edition. By J. M. LELY and W. D. I. FOULKES, Esqrs., Barristers-at-Law. Royal 12mo. 1874. 8s.

**LIQUIDATION BY ARRANGEMENT.**—**Salaman's Practical Treatise on Liquidation by Arrangement and Composition with Creditors, under the Bankruptcy Act, 1869:** comprising the Practice of the Office for Registration of Arrangement Proceedings; the Practice as to Receivers, Injunctions, Meetings of Creditors, &c.; all the Authorised and Original Forms, Bills of Costs under Liquidation and Composition; Notes of Cases; the Sections of the Bankruptcy and Debtors' Acts; and the Rules applicable to Liquidation and Composition; the Rules of 1871. With Index. By JOSEPH SEYMOUR SALAMAN, Solicitor. Crown 8vo. Re-issue. 10s.

**LUNACY.**—**Elmer's Practice in Lunacy.**—Seventh Edition. By JOSEPH ELMER, of the Office of the Masters in Lunacy.

(*In preparation.*)

\* \* All standard Law Works are kept in Stock, in law calf and other bindings.

**MAGISTERIAL LAW.**—Shirley's Elementary Treatise on Magisterial Law, and on the Practice of Magistrates' Courts.—By W. SHIRLEY SHIRLEY, M.A., B.C.L., Esq., Barrister-at-Law. Royal 12mo. 1881. 6s. 6d.

Wigram.—*Vide* "Justice of the Peace."

**MAYOR'S COURT PRACTICE.**—Candy's Mayor's Court Practice.—The Jurisdiction, Process, Practice, and Mode of Pleading in Ordinary Actions in the Mayor's Court, London (commonly called the "Lord Mayor's Court"). Founded on Brandon. By GEORGE CANDY, Esq., Barrister-at-Law. Demy 8vo. 1879. 14s.

**MARRIED WOMEN'S PROPERTY.**—Smith's Married Women's Property Act, 1882, with an Introduction and Critical and Explanatory Notes, together with the Married Women's Property Acts, 1870 and 1874, &c. By H. ARTHUR SMITH, Barrister-at-Law. Royal 12mo. 1882. 5s.

"There are some excellent critical and explanatory notes, together with a good index, and reference to something like two hundred decided cases."—*Law Times*.

**MASTER AND SERVANT.**—Macdonell's Law of Master and Servant. Part I, Common Law. Part II, Statute Law. By JOHN MACDONELL, M.A., Esq., Barrister-at-Law. Demy 8vo. 1883. 1l. 5s.

"Looking at it in its actual character as a law book, we observe in it many admirable features."—*The Times*, January 30, 1883.

"A really exhaustive account of a most important branch of the law."—*Daily News*.

"Mr. Macdonell has done his work thoroughly and well. He has evidently bestowed great care and labour on his task, and has, therefore, produced a work which will be of real value to the practitioner. The information, too, is presented in a most accessible form."—*Law Times*, January 27, 1883.

**MERCANTILE LAW.**—Smith's Compendium of Mercantile Law.—Ninth Edition. By G. M. DOWDESWELL, of the Inner Temple, Esq., one of Her Majesty's Counsel. Royal 8vo. 1877. 1l. 18s.

**Tudor's Selection of Leading Cases on Mercantile and Maritime Law.**—With Notes. By O. D. TUDOR, Esq., Barrister-at-Law. Third Edition. (*In the press*.)

**Wilson's Mercantile Handbook of the Liabilities of Merchant, Shipowner, and Underwriter on Shipments by General Vessels.** By ALEXANDER WILSON, Solicitor and Notary. Royal 12mo. 1883. 6s.

**METROPOLIS BUILDING ACTS.**—Woolrych's Metropolitan Building Acts, together with such clauses of the Metropolitan Management Acts as more particularly relate to the Building Acts, with Notes and Forms. Third Edition. By W. H. MACNAMARA, Esq., Barrister-at-Law. 12mo. 1882. 10s.

"We may safely recommend this new edition to those who have to find their way among these statutes."—*The Builder*, March 31, 1883.

**MINES.**—Rogers' Law relating to Mines, Minerals, and Quarries in Great Britain and Ireland; with a Summary of the Laws of Foreign States, &c. Second Edition Enlarged. By ARUNDEL ROGERS, Esq., Judge of County Courts. 8vo. 1876. 1l. 11s. 6d.

"The volume will prove invaluable as a work of legal reference."—*The Mining Journal*.

**MONEY SECURITIES.**—Cavanagh's Law of Money Securities.—In Three Books. I. Personal Securities. II. Securities on Property. III. Miscellaneous; with an Appendix of Statutes. By C. CAVANAGH, B.A., LL.B. (Lond.), of the Middle Temple, Esq., Barrister-at-Law. In 1 vol. Demy 8vo. 1879. 21s.

"An admirable synopsis of the whole law and practice with regard to securities of every sort."—*Saturday Review*.

\* \* All standard Law Works are kept in Stock, in law calf and other bindings.

**MORTGAGE.**—Coote's Treatise on the Law of Mortgage.—Fourth Edition. Thoroughly revised. By WILLIAM WYLLYS MACKESON, Esq., one of Her Majesty's Counsel. In 1 Vol. (1436 pp.) Royal 8vo. 1880. 2l. 2s.

"A complete, terse, and practical treatise for the modern lawyer."—*Solicitors' Journal*.

"Will be found a valuable addition to the library of every practising lawyer."—*Law Journal*.

**MUNICIPAL CORPORATIONS.**—Lely's Law of Municipal Corporations.—Containing the Municipal Corporation Act, 1882, and the Enactments incorporated therewith, with a Selection of Supplementary Enactments, including therein the Electric Lighting Act, 1882, with Notes thereon. By J. M. LELY, of the Inner Temple, Esq., Barrister-at-Law. Editor of "Chitty's Statutes," &c. Demy 8vo. 1882. 15s.

"An admirable edition of one of the most important consolidating statutes of the year. . . . The summary is tersely written, and the notes appear to be to the point. Nothing required for the due understanding and working of the Act seems to be absent."—*Law Journal*.

**NAVY.**—Thring's Criminal Law of the Navy, with an Introductory Chapter on the Early State and Discipline of the Navy, the Rules of Evidence, and an Appendix comprising the Naval Discipline Act and Practical Forms. Second Edition. By THEODORE THRING, Barrister-at-Law, and C. E. GIFFORD, Assistant-Paymaster, Royal Navy. 12mo. 1877. 12s. 6d.

**NEGLIGENCE.**—Smith's Treatise on the Law of Negligence, with a Supplement containing "The Employers' Liability Act, 1880," with an Introduction and Notes. By HORACE SMITH, B.A., Esq., Barrister-at-Law, Recorder of Lincoln. Demy 8vo. 1880. 10s. 6d.

**NISI PRIUS.**—Roscoe's Digest of the Law of Evidence on the Trial of Actions at Nisi Prius.—Fifteenth Edition. By MAURICE POWELL, Esq., Barrister-at-Law. (In the Press.)

**NOTANDA.**—Vide "Digesta."

**NOTARY.**—Brooke's Treatise on the Office and Practice of a Notary of England.—With a full collection of Precedents. Fourth Edition. By LEONE LEVI, Esq., F.S.A., of Lincoln's Inn, Barrister-at-Law. 8vo. 1876. 1l. 4s.

**OATHS.**—Braithwaite's Oaths in the Supreme Courts of Judicature.—A Manual for the use of Commissioners to Administer Oaths in the Supreme Courts of Judicature in England and Ireland, &c. Fourth Edition. By T. W. BRAITHWAITE, of the Central Office. Fcap. 8vo. 1881. 4s. 6d.

"The recognised guide of commissioners to administer oaths."—*Solicitors' Journal*.

**PARISH LAW.**—Steer's Parish Law; being a Digest of the Law relating to the Civil and Ecclesiastical Government of Parishes and the Relief of the Poor. Fourth Edition. By W. H. MACNAMARA, Esq., Barrister-at-Law. Demy 8vo. 1881. 16s.

"An exceedingly useful compendium of Parish Law."—*Law Times*.

**PARTNERSHIP.**—Pollock's Digest of the Law of Partnership.—Second Edition, with Appendix, containing an annotated reprint of the Partnership Bill, 1880, as amended in Committee. By FRÉDÉRICK POLLOCK, Esq., Barrister-at-Law. Author of "Principles of Contract at Law and in Equity." Demy 8vo. 1880. 8s. 6d.

"Of the execution of the work, we can speak in terms of the highest praise. The language is simple, concise, and clear."—*Law Magazine*.

"Mr. Pollock's work appears eminently satisfactory . . . the book is praiseworthy in design, scholarly and complete in execution."—*Saturday Review*.

\* \* All standard Law Works are kept in Stock, in law calf and other bindings.



**PATENTS.**—Thompson's Handbook of Patent Law of all Countries.—Third Edition, revised. By WM. P. THOMPSON, C.E. 12mo. 1878. *Net, 2s. 6d.*

**PAWN.**—Turner's Contract of Pawn, as it exists at Common Law, and as modified by the Factors' Acts, the Pawn-brokers' Acts, and other Statutes. By FRANCIS TURNER, Esq., Barrister-at-Law. Second Edition. 8vo. 1883. (*Nearly ready.*) 12s.

Turner's Pawnbrokers' Act, 1872.—With Explanatory Notes. By FRANCIS TURNER, Esq., Barrister-at-Law. Third Edition. 1883. *Net, 2s. 6d.*

**PERPETUITIES.**—Marsden's Rule against Perpetuities.—A Treatise on Remoteness in Limitation; with a chapter on Accumulation and the Thelluson Act. By REGINALD G. MARSDEN, Esq., Barrister-at-Law. Demy 8vo. 1883. 16s.

"Mr. Marsden's work is entitled to be called a new one both in treatment and in design. He has handled a difficult subject with intelligence and clearness."—*Law Times*.

**PERSONAL PROPERTY.**—Shearwood's Concise Abridgment of the Law of Personal Property; showing analytically its Branches and the Titles by which it is held. By JOSEPH A. SHEARWOOD, Esq., Barrister-at-Law. 1882. 5s. 6d.

"Will be acceptable to many students, as giving them, in fact, a ready-made note book."—*Indermar's Law Student's Journal*.

**PLEADING.**—Allen's Forms of Indorsements of Writs of Summons, Pleadings, and other Proceedings in the Queen's Bench Division prior to Trial, pursuant to the Rules of the Supreme Court, 1883; with Introduction, showing the principal changes introduced by these Rules, and a Supplement of Rules and Forms of Pleadings applicable to the other Divisions. By GEORGE BAUGH ALLEN, Esq., Special Pleader, and WILFRED B. ALLEN, Esq., Barrister-at-Law. Royal 12mo. 1883. (*Nearly ready.*)

Bullen and Leake's Precedents of Pleadings, with Notes and Rules relating to Pleading. Fourth Edition. By THOMAS J. BULLEN, Esq., of the Inner Temple, and CYRIL DODD, Esq., Barrister-at-Law. Part I. (containing (1) Introductory Notes on Pleading; (2) Forms of Statements of Claim in Actions on Contracts and Torts, with Notes relating thereto). Royal 12mo. 1882. 11. 4s.

"Mr. Thomas Bullen and Mr. Cyril Dodd have done their work of adaptation admirably."—*Law Journal*.

**POISONING.**—Reports of Trials for Murder by Poisoning; by Prussic Acid, Strychnia, Antimony, Arsenic and Aconitine; including the trials of Tawell, W. Palmer, Dove, Madeline Smith, Dr. Pritchard, Smethurst, and Dr. Lamson. With Chemical Introductions and Notes on the Poisons used. By G. LATHAM BROWNE, of the Midland Circuit, Barrister-at-Law, Author of "Narratives of State Trials in the Nineteenth Century," and C. G. STEWART, Senior Assistant in the Laboratory of St. Thomas's Hospital, &c. Demy 8vo. 1883. 12s. 6d.

"The work will be found alike useful to the lawyer as to the medical man."—*Law Times*.

"As a guide to barristers anxious to post themselves up in points to ask, and to scientific witnesses to see the possible pitfalls to avoid, it will be invaluable."—*The Analyst*, August, 1883.

\*.\* All standard Law Works are kept in Stock, in law calf and other bindings.

**POWERS.**—Farwell on Powers.—A Concise Treatise on Powers. By GEORGE FARWELL, B.A., of Lincoln's Inn, Esq., Barrister-at-Law. 8vo. 1874. 1*l.* 1*s.*

"We recommend Mr. Farwell's book as containing within a small compass what would otherwise have to be sought out in the pages of hundreds of confusing reports."—*The Law.*

**PROBATE.**—Browne's Probate Practice: a Treatise on the Principles and Practice of the Court of Probate, in Contentious and Non-Contentious Business. Revised, enlarged, and adapted to the Practice of the High Court of Justice in Probate business. By L. D. POWLES, Barrister-at-Law. Including Practical Directions to Solicitors for Proceedings in the Registry. By T. W. H. OAKLEY, of the Principal Registry, Somerset House. 8vo. 1881. 1*l.* 10*s.*

"This edition will thus supply the practitioners in both branches of the profession with all the information that they may require in connection with the probate of wills."—*The Times.*

"In its present form this is undoubtedly the most complete work on the Practice of the Court of Probate. . . . This is strictly a practical book. No principle of law, statute or form which could be of service to the practitioner in the Probate Division appears to have been omitted."—*The Law Times.*

**PUBLIC HEALTH.**—Chambers' Digest of the Law relating to Public Health and Local Government.—With Notes of 1260 leading Cases. The Statutes in full. A Table of Offences and Punishments, and a Copious Index. Eighth Edition (with Supplement corrected to February 8, 1883). Imperial 8vo. 1881. 1*l.* 14*s.*

Or, the above with the Law relating to Highways and Bridges. 2*l.*

**PUBLIC MEETINGS.**—Chambers' Handbook for Public Meetings, including Hints as to the Summoning and Management of them. By GEORGE F. CHAMBERS, Esq., Barrister-at-Law. 12mo. 1878. 6*d.*

**QUARTER SESSIONS.**—Leeming & Cross's General and Quarter Sessions of the Peace.—Their Jurisdiction and Practice in other than Criminal matters. Second Edition. By HORATIO LLOYD, Esq., Judge of County Courts, and H. F. THURLOW, Esq., Barrister-at-Law. 8vo. 1876. 1*l.* 1*s.*

**Pritchard's Quarter Sessions.**—The Jurisdiction, Practice and Procedure of the Quarter Sessions in Criminal, Civil, and Appellate Matters. By THOS. SIRRELL PRITCHARD, of the Inner Temple, Esq., Barrister-at-Law, Recorder of Wenlock. 8vo. 1875. 2*l.* 2*s.*

**RAILWAYS.**—Browne and Theobald's Law of Railway Companies.—Being a Collection of the Acts and Orders relating to Railway Companies, with Notes of all the Cases decided thereon, and Appendix of Bye-Laws and Standing Orders of the House of Commons. By J. H. BALFOUR BROWNE, Esq., Registrar to the Railway Commissioners, and H. S. THEOBALD, Esq., Barristers-at-Law. Demy 8vo. 1881. 1*l.* 12*s.*

"Contains in a very concise form the whole law of railways."—*The Times.*

"A marvel of wide design and accurate and complete fulfilment. . . . A complete and valuable repository of all the learning as to railway matters."—*Saturday Review.*

"As far as we have examined the volume the learned authors seem to have presented the profession and the public with the most ample information to be found whether they want to know how to start a railway, how to frame its bye-laws, how to work it, how to attack it for injury to person or property, or how to wind it up."—*Law Times.*

**RATES AND RATING.**—Castle's Practical Treatise on the Law of Rating. By EDWARD JAMES CASTLE, of the Inner Temple, Esq., Barrister-at-Law. Demy 8vo. 1879. 1*l.* 1*s.*

"Mr. Castle's book is a correct, exhaustive, clear and concise view of the law."—*Law Times.*

\*.\* All standard Law Works are kept in Stock, in law calf and other bindings.

**RATES AND RATING.**—*Continued.*

**Chambers' Law** relating to Rates and Rating; with especial reference to the Powers and Duties of Rate-levying Local Authorities, and their Officers. Being the Statutes in full and brief Notes of 550 Cases. By G. F. CHAMBERS, Esq., Barrister-at-Law. Imp. 8vo. 1878. *Reduced to 10s.*

**REAL ESTATE.**—Foster's Law of Joint Ownership and Partition of Real Estate. By EDWARD JOHN FOSTER, M.A., late of Lincoln's Inn, Barrister-at-Law. 8vo. 1878. *10s. 6d.*

**REAL PROPERTY.**—Greenwood's Real Property Statutes. Second Edition. By HARRY GREENWOOD, M.A., Esq., Barrister-at-Law. *(In preparation.)*

**Leake's Elementary Digest of the Law of Property in Land.**—Containing: Introduction. Part I. The Sources of the Law.—Part II. Estates in Land. By STEPHEN MARTIN LEAKE, Barrister-at-Law. 8vo. 1874. *1l. 2s.*

\* The above forms a complete Introduction to the Study of the Law of Real Property.

**Shearwood's Real Property.**—A Concise Abridgment of the Law of Real Property and an Introduction to Conveyancing. Designed to facilitate the subject for Students preparing for Examination (incorporating the changes effected by the Conveyancing Act). By JOSEPH A. SHEARWOOD, of Lincoln's Inn, Esq., Barrister-at-Law. Second Edition. Demy 8vo. 1882. *7s. 6d.*

"We heartily recommend the work to students for any examination on real property and conveyancing, advising them to read it after a perusal of other works and shortly before going in for the examination."—*Law Student's Journal*, April 1, 1882.

"A very useful little work, particularly to students just before their examination."—*Osborn's Law Notes*, May, 1882.

"Excellent adapted to its purpose, and is in the present edition brought well down to date."—*Law Magazine*, May, 1882.

"A very excellent specimen of a student's manual."—*Law Journal*, May 20, 1882.

"Will be found useful as a stepping-stone to the study of more comprehensive works."—*Law Times*, June 17, 1882.

**Shelford's Real Property Statutes.**—Ninth Edition. By T. H. CARSON, Esq., Barrister-at-Law. *(In the press.)*

**Smith's Real and Personal Property.**—A Compendium of the Law of Real and Personal Property, primarily connected with Conveyancing. Designed as a second book for Students, and as a digest of the most useful learning for Practitioners. By JOSIAH W. SMITH, B.C.L., Q.C. Fifth Edition. 2 vols. Demy 8vo. 1877. *2l. 2s.*

"He has given to the student a book which he may read over and over again with profit and pleasure."—*Law Times*.

"The work before us will, we think, be found of very great service to the practitioner."—*Solicitors' Journal*.

**REGISTRATION.**—Browne's (G. Lathom) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. cap. 26); with an Introduction, Notes, and Additional Forms. By G. LATHOM BROWNE, of the Middle Temple, Esq., Barrister-at-Law. 12mo. 1878. *5s. 6d.*

Rogers.—*Vide* "Elections."

**REGISTRATION CASES.**—Hopwood and Coltman's Registration Cases.—Vol. I. (1868-1872). *Net, 2l. 18s. 6d.* Vol. II. (1873-1878). *Net, 2l. 10s. 6d.*

Coltman's Registration Cases.—Vol. I. Part I. (1879—80). *Net, 10s.* Part II. (1880). *Net, 8s. 6d.* Part III. (1881). *Net, 9s.* Part IV. (1882). *Net, 4s.*

\* \* All standard Law Works are kept in Stock, in law calf and other bindings.

**ROMAN LAW.—Cumin.—***Vide* "Civil."

**Greene's Outlines of Roman Law.**—Consisting chiefly of an Analysis and Summary of the Institutes. For the use of Students. By T. WHITCOMBE GREENE, B.C.L., of Lincoln's Inn, Barrister-at-Law. Third Edition. Foolscep 8vo. 1875. 7s. 6d.

**Mears' Student's Gaius and Justinian.**—The Text of the Institutes of Gaius and Justinian, The Twelve Tables, and the CXVIII. and CXXVII. Novels, with Introduction and Translation by T. LAMBERT MEARS, M.A., LL.D., of the Inner Temple, Barrister-at-Law. Post 8vo. 1882. 18s.

"The translation seems to be carefully done, and displays more neatness and elegance than is usually found in renderings of Roman legal texts."—*The Times*.

**Mears' Student's Ortolan.**—An Analysis of M. Ortolan's Institutes of Justinian, including the History and Generalization of ROMAN LAW. By T. LAMBERT MEARS, M.A., LL.D. Lond., of the Inner Temple, Barrister-at-Law. Published by permission of the late M. Ortolan. Post 8vo. 1876. 12s. 6d.

**Ruegg.**—*Vide* "Justinian."

**RULES OF THE SUPREME COURT: The Rules of the**

Supreme Court, 1883 (official copy). *Net, 2s. 2d.*

Do. interleaved. *Net, 4s. 6d.*

Do. bound in limp leather. *Net, 6s. 6d.*

Do. do. do. interleaved. *Net, 8s. 6d.*

Do., with an Index. By M. D. CHALMERS and M. MUIR MACKENZIE, Esqrs., Barristers-at-Law, Editors of "Wilson's Judicature Acts." *Net, 4s. 6d.*

Do. bound in limp leather. *Net, 9s.*

Do. do. do. interleaved. *Net, 10s. 6d.*

**The Rules of the Supreme Court, 1883.**—With Introduction, References, Notes, and Index, by A. R. WHITEWAY, M.A., of the Equity Bar and Midland Circuit. Author of "Hints to Solicitors" and "Hints on Practice." Royal 12mo. 1883. 7s. 6d.

**SETTLED ESTATES STATUTES.**—Middleton's Settled Estates Statutes, including the Settled Estates Act, 1877, Settled Land Act, 1882, Improvement of Land Act, 1864, and the Settled Estates Act Orders, 1878, with Introduction, Notes and Forms. Third Edition. With Appendix of Rules and Forms under the Settled Land Act, 1882. By JAMES W. MIDDLETON, B.A., Barrister-at-Law. Royal 12mo. 1882. 7s. 6d.

"In form the book is very simple and practical, and having a good index it is sure to afford material assistance to every practitioner who seeks its aid."—*Law Journal*.

"The book is intended for the legal adviser and equity draftsman, and to these it will give considerable assistance."—*Law Times*.

"The best manual on the subject of settled estates which has yet appeared."—*The Sheffield Daily Post*.

**SHERIFF LAW.**—Churchill's Law of the Office and Duties of the Sheriff, with the Writs and Forms relating to the Office. Second Edition. By CAMERON CHURCHILL, B.A., of the Inner Temple, Barrister-at-Law. Demy 8vo. 1882. 1l. 4s.

"A very complete treatise."—*Solicitors' Journal*.

"Under-sheriffs, and lawyers generally, will find this a useful book."—*Law Mag.*

**SHIPPING, and vide** "Admiralty."

**Boyd's Merchant Shipping Laws;** being a Consolidation of all the Merchant Shipping and Passenger Acts from 1864 to 1876, inclusive; with Notes of all the leading English and American Cases on the subjects affected by Legislation, and an Appendix; forming a complete Treatise on Maritime Law. By A. C. BOYD, LL.B., Esq., Barrister-at-Law. 8vo. 1876. 1l. 5s.

We can recommend the work as a very useful compendium of shipping law."—*Law Times*

\* \* All standard Law Works are kept in Stock, in law calf and other bindings.

**SHIPPING.**—*Continued.*

Foard's Treatise on the Law of Merchant Shipping and Freight.—By JAMES T. FOARD, Barrister-at-Law. Royal 8vo. 1880. *Half calf, 1l. 1s.*

**SLANDER.**—Odgers.—*Vide* "Libel and Slander."

**SOLICITORS.**—Cordery's Law relating to Solicitors of the Supreme Court of Judicature.—With an Appendix of Statutes and Rules. By A. CORDERY, of the Inner Temple, Esq., Barrister-at-Law. Demy 8vo. 1878. *14s.*  
 "Mr. Cordery writes tersely and clearly, and displays in general great industry and care in the collection of cases."—*Solicitors' Journal.*

**Turner.**—*Vide* "Vendors and Purchasers"

Whiteway's Hints to Solicitors.—Being a Treatise on the Law relating to their Duties as Officers of the High Court of Justice; with Notes on the Recent Changes affecting the Profession; and a *reue mecum* to the Law of Costs. By A. R. WHITEWAY, M.A., of the Equity Bar and Midland Circuit. Author of "Hints on Practice." Royal 12mo. 1883. *6s.*

"A concise treatise of useful information bearing principally on the liabilities and duties attaching to solicitors in the conduct of their business."—*Law Times.*

"He writes tersely and practically, and the cases he gives, if not exhaustive of the subject, are numerous and pithily explained. The book will altogether be found of great practical value."—*Law Journal*, May 19, 1883.

**SPECIFIC PERFORMANCE.**—Fry's Treatise on the Specific Performance of Contracts.—By the Hon. Sir EDWARD FRY, one of the Judges of the High Court of Justice (now a Lord Justice of Appeal). Second Edition. By the Author and W. DONALDSON RAWLINS, of Lincoln's Inn, Esq., Barrister-at-Law, M.A. Royal 8vo. 1881. *1l. 16s.*

"So far as we have been able to compare the second edition with the first, we cannot but admit that the work has been much improved by the revision and re-writing of which this edition is the result."—*The Times.*

**STAMP LAWS.**—Tilsley's Treatise on the Stamp Laws.—8vo. 1871. *18s.*

**STATUTE LAW.**—Wilberforce on Statute Law.—The Principles which govern the Construction and Operation of Statutes. By E. WILBERFORCE, Esq., Barrister-at-Law. 1881. *18s.*

"Mr. Wilberforce's book bears throughout conspicuous marks of research and care in treatment."—*Solicitors' Journal.*

**STATUTES.** and *vide* "Acts of Parliament."

Chitty's Collection of Statutes from Magna Charta to 1880.—A Collection of Statutes of Practical Utility; arranged in Alphabetical and Chronological order, with Notes thereon. The Fourth Edition, containing the Statutes and Cases down to the end of the Second Session of the year 1880. By J. M. LELY, Esq., Barrister-at-Law. In 6 very thick vols. Royal 8vo. (8,346 pp.) 1880. *12l. 12s.*

*Supplements to above, 44 & 45 Vict. (1881). 8s. 45 & 46 Vict. (1882). 16s.*

\* \* This Edition is printed in larger type than former Editions, and with increased facilities for Reference.

"It is needless to enlarge on the value of "Chitty's Statutes" to both the Bar and to solicitors, for it is attested by the experience of many years. It only remains to point out that Mr. Lely's work in bringing up the collection to the present time is distinguished by care and judgment. The difficulties of the editor were chiefly those of selection and arrangement. A very slight laxness of rule in including or excluding certain classes of Acts would materially affect the size and compendiousness of the work. Still more important, however, is the way in which the mechanical difficulties of arrangement are met. The Statutes are compiled under sufficiently comprehensive

\* \* All standard Law Works are kept in Stock, in law calf and other bindings.

**STATUTES.**—*Continued.*

titles, in alphabetical order. Mr. Lely, moreover, supplies us with three indices—the first, at the head of each title, to the enactments comprised in it; secondly, an index of Statutes in chronological order; and, lastly, a general index. By these cross references research into every branch of law governed by the Statutes is made easy both for lawyer and layman.”—*The Times*.

“A very satisfactory edition of a time-honoured and most valuable work, the trusty guide of present, as of former judges, jurists, and of all others connected with the administration or practice of the law.”—*Justice of the Peace*.

“The practitioner has only to take down one of the compact volumes of Chitty, and he has at once before him all the legislation on the subject in hand.”—*Solicitors' Journal*.

“‘Chitty’ is pre-eminently a friend in need. Those who do not possess a complete set of the statutes turn to its chronological index when they wish to consult a particular Act of Parliament. Those who wish to know what Acts are in force with reference to a particular subject turn to that head in ‘Chitty,’ and at once find all the material of which they are in quest. Moreover, they are, at the same time, referred to the most important cases which throw light on the subject.”—*Law Journal*.

• **Public General Statutes**, royal 8vo, issued in parts and in complete volumes, and supplied immediately on publication.

• Printed by Her Majesty's Printers, and Sold by **STEVENS & SONS**.

**SUMMARY CONVICTIONS.**—Highmore.—*Vide* “Inland Revenue Cases.”

**Paley's Law and Practice of Summary Convictions under the Summary Jurisdiction Acts, 1848 and 1879**; including Proceedings preliminary and subsequent to Convictions, and the responsibility of convicting Magistrates and their Officers, with Forms. Sixth Edition. By **W. H. MACNAMARA**, Esq., Barrister-at-Law. Demy 8vo. 1879. 1*l*. 4*s*.

“We gladly welcome this good edition of a good book.”—*Solicitors' Journal*.

**Templer's Summary Jurisdiction Act, 1879.**—Rules and Schedules of Forms. With Notes. By **F. G. TEMPLER**, Esq., Barrister-at-Law. Demy 8vo. 1880. 5*s*.

“We think this edition everything that could be desired.”—*Sheffield Post*.

**Wigram.**—*Vide* “Justice of the Peace.”

**SUMMONSES AND ORDERS.**—Archibald.—*Vide* “Judges' Chambers Practice.”

**TAXES ON SUCCESSION.**—Trevor's Taxes on Succession.—A Digest of the Statutes and Cases (including those in Scotland and Ireland) relating to the Probate, Legacy and Succession Duties, with Practical Observations and Official Forms. Completely rearranged and thoroughly revised. By **EVELYN FREETH** and **ROBERT J. WALLACE**, of the Legacy and Succession Duty Office. Fourth Edition, containing full information as to the Alterations made in the above Taxes by the 44 Vict. c. 12, and the Stamp Duty thereby imposed on “Accounts.” Royal 12mo. 1881. 12*s*. 6*d*.

“Contains a great deal of practical information, which is likely to make it very useful to solicitors.”—*Law Journal*.

“The mode of treatment of the subject adopted by the authors is eminently practical.”—*Solicitors' Journal*.

**TORTS.**—Addison on Wrongs and their Remedies.—

Being a Treatise on the Law of Torts. By **O. G. ADDISON**, Esq., Author of “The Law of Contracts.” Fifth Edition. Re-written. By **L. W. CAVE**, Esq., M.A., one of Her Majesty's Counsel (now a Justice of the High Court). Royal 8vo. 1879. 1*l*. 18*s*.

“As now presented, this valuable treatise must prove highly acceptable to judges and the profession.”—*Law Times*.

“Cave's ‘Addison on Torts’ will be recognized as an indispensable addition to every lawyer's library.”—*Law Magazine*.

**Ball.**—*Vide* “Common Law.”

\* \* \* *All Standard Law Works are kept in Stock, in law calf and other bindings.*

**TRADE MARKS.**—Hardingham's Trade Marks: Notes on the British, Foreign, and Colonial Laws relating thereto. Compiled for the use of Manufacturers, Merchants, and others interested in Commerce. By GEO. GATTON MELHUISE HARDINGHAM, Assoc. Mem. Inst. C.E., Mem. Inst. M.E., Consulting Engineer and Patent Agent. Royal 12mo. 1881. *Net, 2s. 6d.*

**Sebastian on the Law of Trade Marks.**—The Law of Trade Marks and their Registration, and matters connected therewith, including a chapter on Goodwill. Together with Appendices containing Precedents of Injunctions, &c.; The Trade Marks Registration Acts, 1875—7, the Rules and Instructions thereunder; The Merchandise Marks Act, 1862, and other Statutory enactments; The United States Statute, 1870 and 1875, the Treaty with the United States, 1877; and the Rules and Instructions issued in February, 1878. With a copious Index. By LEWIS BOYD SEBASTIAN, B.C.L., M.A., Esq., Barrister-at-Law. 8vo. 1878. *14s.*

"The Master of the Rolls in his judgment in *Re Palmer's Trade Marks*, said 'He was glad to see that the well-known writer on trade marks, Mr. Sebastian, had taken the same view of the Act.'—*The Times*."

"Mr. Sebastian has written the fullest and most methodical book on trade marks which has appeared in England since the passing of the Trade Marks Registration Act."—*Trade Marks*.

**Sebastian's Digest of Cases of Trade Mark, Trade Name, Trade Secret, Goodwill, &c.,** decided in the Courts of the United Kingdom, India, the Colonies, and the United States of America. By LEWIS BOYD SEBASTIAN, B.C.L., M.A., Esq., Barrister-at-Law. 8vo. 1879. *12 1s.*

"A digest which will be of very great value to all practitioners who have to advise on matters connected with trade marks."—*Solicitors' Journal*.

**Trade Marks Journal.**—4to. Sewed. (*Issued fortnightly.*)

Nos. 1 to 288 are now ready.

*Net, each 1s.*

Index to Vols. I. to VI.

*Net, each 3s.*

Do. Vol. VII.

*Net, 4s. 6d.*

**TRAMWAYS.**—Sutton's Tramway Acts of the United Kingdom; with Notes on the Law and Practice, an Introduction, including the Proceedings before the Committees, Decisions of the Referees with respect to Locus Standi, and a Summary of the Principles of Tramway Rating, and an Appendix containing the Standing Orders of Parliament, Rules of the Board of Trade relating to Tramways, &c. Second Edition. By HENRY SUTTON, B.A., assisted by ROBERT A. BENNETT, B.A., Barristers-at-Law. Demy 8vo. 1883. *15s.*

"The book is exceedingly well done, and cannot fail not only to be the standard work on its own subject, but to take a high place among legal text-books."—*Law Journal*, April 21, 1883.

**TRIALS FOR MURDER BY POISONING.**—Browne and Stewart.—*Vide "Poisons."*

**TRUSTS AND TRUSTEES.**—Godefroi's Digest of the Principles of the Law of Trusts and Trustees.—By HENRY GODEFROI, of Lincoln's Inn, Esq., Barrister-at-Law. Joint Author of "Godefroi and Shortt's Law of Railway Companies." Demy 8vo. 1879. *11 1s.*

"As a digest of the law, Mr. Godefroi's work merits commendation, for the author's statements are brief and clear, and for his statements he refers to a goodly array of authorities. In the table of cases the references to the several contemporaneous reports are given, and there is a very copious index to subjects."—*Law Journal*.

**USES**—Jones (W. Hanbury) on Uses.—8vo. 1862. *7s.*

STEVENS & SONS, 119, CHANCERY LANE, LONDON, W.C.

**VENDORS AND PURCHASERS.**—*Dart's Vendors and Purchasers.*—A Treatise on the Law and Practice relating to Vendors and Purchasers of Real Estate. By J. HENRY DART, Esq., one of the Six Conveyancing Counsel of the High Court of Justice, Chancery Division. Fifth Edition. By the AUTHOR and WILLIAM BARBER, Esq., Barrister-at-Law. 2 vols. Royal 8vo. 1876. 3*l.* 13*s.* 6*d.*

"A standard work like Mr. Dart's is beyond all praise."—*The Law Journal.*

**Turner's Duties of Solicitor to Client as to Sales, Purchases, and Mortgages of Land.** By EDWARD F. TURNER, Solicitor, Lecturer on Real Property and Conveyancing, and one of the Assistant Examiners for Honours to the Incorporated Law Society for 1882-3. (*Published by permission of the Incorporated Law Society*). Demy 8vo. 1883. 10*s.* 6*d.*

**VOLUNTEER LAW.**—A Manual of the Law regulating the Volunteer Forces.—By W. A. BURN and W. T. RAYMOND, Esqrs., Barristers-at-Law, and Captains in H.M. Volunteer Forces. Royal 12mo. 1882. Net, 2*s.*

**WATERS.**—*Woolrych on the Law of Waters.*—Including Rights in the Sea, Rivers, &c. Second Edition. 8vo. 1851. Net, 10*s.*

**WILLS.**—*Rawlinson's Guide to Solicitors on taking Instructions for Wills.*—8vo. 1874. 4*s.*

**Theobald's Concise Treatise on the Law of Wills.**—With Statutes, Table of Cases and Full Index. By H. S. THEOBALD, Esq., Barrister-at-Law. Second Edition. Demy 8vo. 1881. 1*l.* 4*s.*

"Mr. Theobald has certainly given evidence of extensive investigation, conscientious labour, and clear exposition."—*Law Magazine.*

"A book of great ability and value. It bears on every page traces of care and sound judgment. It is certain to prove of great practical usefulness."—*Solicitors' Journal.*

"His arrangement being good, and his statement of the effect of the decisions being clear, his work cannot fail to be of practical utility."—*Law Times.*

**Weaver's Precedents of Wills.**—A collection of concise Precedents of Wills, with Introduction, Notes, and an Appendix of Statutes. By Charles Weaver, B.A. Post 8vo. 1882. 5*s.*

**WRONGS.**—Addison.—*Vide "Torts."*

**REPORTS.**—A large stock new and second-hand.  
*Prices on application.*

**BINDING.**—*Executed in the best manner at moderate prices and with dispatch.*

*The Law Reports, Law Journal, and all other Reports, bound to Office Patterns, at Office Prices.*

**PRIVATE ACTS.**—*The Publishers of this Catalogue possess the largest known collection of Private Acts of Parliament (including Public and Local), and can supply single copies commencing from a very early period.*

**VALUATIONS.**—*For Probate, Partnership, or other purposes.*

**LIBRARIES PURCHASED.**



## STEVENS & SONS' ANNOUNCEMENTS OF NEW WORKS AND NEW EDITIONS.

- Allen's Forms of Indorsements of Writs of Summons, Pleadings and other Proceedings in the Queen's Bench Division prior to Trial, pursuant to the Rules of the Supreme Court, 1883; with Introduction showing the principal changes introduced by these Rules, and a Supplement of Rules and Forms of Pleadings applicable to the other Divisions.** By *George Baugh Allen*, Special Pleader, and *Wilfred B. Allen*, Barrister-at-Law. Royal 12mo. 1883. (*Nearly ready.*)
- Amos and Ferard's Law of Fixtures.**—Third Edition. Revised and adapted to the present state of the Law, including the Agricultural Holdings Act, 1883. By *Charles Agace Ferard* and *Walworth Howland Roberts*, Esqrs., Barristers-at-Law. (*In the press.*)
- Chitty's Index to all the Reported Cases decided in the several Courts of Equity in England, the Privy Council, and the House of Lords. With a selection of Irish Cases, on or relating to the Principles, Pleading, and Practice of Equity and Bankruptcy; from the earliest period. The Fourth Edition, wholly revised, reclassified and brought down to the date of publication by William Frank Jones, B.C.L., M.A., and Henry Edward Hirst, B.C.L., M.A., both of Lincoln's Inn, Esqrs., Barristers at-Law.** In 5 or 6 vols. (*Vol. II., nearly ready.*)
- Daniell's Chancery Practice.**—Sixth Edition. By *L. Field, E. C. Dunn*, and *T. Ribton*, assisted by *W. H. Upjohn*, Esqrs., Barristers-at-Law. In 2 Vols. Demy 8vo. (*Vol. II. nearly ready.*)
- Fisher's Digest of Reported Decisions in all the Courts, with a Selection from the Irish; the cases overruled and impeached and references to the Statutes, Rules and Orders of Courts from 1756 to 1883. Compiled and arranged by John Mews, assisted by Cecil Maurice Chapman, Harry Hadden Wickes Sparkam and Arthur Horatio Todd, Barristers-at-Law.** (*In the press.*)
- Haynes' The Honours Examination Digest.**—By *John P. Haynes*, LL.D. and *T. A. Nelham*, Solicitor. (*Nearly ready.*)
- Lowndes' Law of General Average.**—English and Foreign. Fourth Edition. By *Richard Lowndes*. (*In preparation.*)
- Lowndes' Treatise on the Law of Marine Insurance.** Second Edition. By *Richard Lowndes*. (*In preparation.*)
- Lush's Law of Husband and Wife; with a chapter on Marriage Settlements.** By *C. Montague Lush*, of Gray's Inn and North Eastern Circuit, Esq., Barrister-at-Law. (*In the press.*)
- Roscoe's Digest of the Law of Evidence on the Trial of Actions at Nisi Prius.**—Fifteenth Edition. By *Maurice Powell*, Esq., Barrister-at-Law. (*In the press.*)
- Summerhays and Toogood's Precedents of Bills of Costs.** Fourth Edition. By *Wm. Frank Summerhays* and *Thornton Toogood*, Solicitors. (*In the press.*)
- Tudor's Selections of Leading Cases on Mercantile and Maritime Law.**—With Notes. By *O. D. Tudor*, Esq., Barrister-at-Law. Third Edition. (*In the press.*)
- Wilson's Supreme Court of Judicature Acts, Rules of the Supreme Court, 1883, and Forms.** With other Acts, Orders, Rules and Regulations relating to the Supreme Court. With Practical Notes. Fourth Edition. By *M. D. Chalmers*, of the Inner Temple, and *M. Muir Mackenzie*, of Lincoln's Inn, Barristers-at-Law. Royal 12mo. (*Nearly ready.*)
- \*. \* *A large paper edition for marginal notes.* Royal 8vo. (*Nearly ready.*)

STEVENS AND SONS, 119, CHANCERY LANE, LONDON, W.C.



STEVENS AND SONS, 119, CHANCERY LANE, W.C.

**Chitty's Statutes from Magna Charta to 1880.—New Edition.**

A Collection of Statutes of Practical Utility. Arranged in Alphabetical and Chronological Order; with Notes thereon. The *Fourth Edition*. Containing the Statutes and Cases down to the end of the second Session of the year 1880. By J. M. LELY, Esq., Barrister-at-Law. In 6 vols. Royal 8vo. (8346 pp.) Price 12l. 12s. cloth.

Supplement to above, 44 and 45 Vict. (1881). Royal 8vo. Price 8s. sewed.

*Ditto* 45 and 46 Vict. (1882). Royal 8vo. Price 16s. sewed.

"The practitioner has only to take down one of the compact volumes of Chitty, and he has once before him all the legislation on the subject in hand."—*Solicitors' Journal*.

**Addison on Wrongs and their Remedies.—Being a Treatise**

on the Law of Torts. *Fifth Edition*. Re-written. By I. W. CAVE, Esq., one of Her Majesty's Counsel. (Now a Justice of the High Court.) Royal 8vo. 1879. Price 1l. 18s. cloth.

"Cave's 'Addison on Torts' will be recognized as an indispensable addition to every lawyer's library."—*Law Magazine*.

**Browne and Theobald's Law of Railway Companies.—**

Being a Collection of the Acts and Orders relating to Railway Companies. With Notes of all the Cases decided thereon, and Appendix of Bye-Laws, and Standing Orders of the House of Commons. By J. H. BALFOUR BROWNE, Registrar to the Railway Commissioners; and H. S. THEOBALD, Esqrs., Barristers-at-Law. In 1 vol., Demy 8vo. 1881. Price 1l. 12s. cloth.

"Contains in a very concise form the whole law of railways."—*The Times*.

**Harris' Hints on Advocacy.—Conduct of Cases, Civil and**

Criminal, Classes of Witnesses and suggestions for Cross-Examining them. By RICHARD HARRIS, Barrister-at-Law, of the Midland Circuit. *Sixth Edition*. (Further Revised and Enlarged). Royal 12mo. 1882. Price 7s. 6d. cloth.

"Full of good sense and just observation. A very complete Manual of the advocate's art in trial by jury."—*Solicitors' Journal*.

**Wigram's Justices' Note-Book, containing a Short Account**

of the Jurisdiction and Duties of Justices, and an Epitome of Criminal Law. By W. KNOX WIGRAM, of Lincoln's Inn, Barrister-at-Law, J.P. Middlesex and Westminster. *Third Edition*. Corrected and Revised to December, 1882. With a Copious Index. Royal 12mo. 1883. Price 12s. 6d. cloth.

"We can thoroughly recommend the volume to magistrates."—*Law Times*.

**Theobald's Concise Treatise on the Law of Wills.—With**

Statutes, Table of Cases and full Index. By H. S. THEOBALD, Esq., Barrister-at-Law. *Second Edition*. With Addendum, containing a Summary of the Alterations made in the Law relating to Wills by the Married Women's Property Act 1882, and the Conveyancing Act, 1882. Demy 8vo. 1881. Price 1l. 4s. cloth.

"A book of great ability and value. It bears on every page traces of care and sound judgment. It is certain to prove of great practical usefulness."—*Solicitors' Journal*.

**Weaver's Precedents of Wills.—A collection of Concise**

Precedents of Wills. With Introduction, Notes, and an Appendix of Statutes. CHARLES WEAVER, B.A. Crown 8vo. 1882. Price 5s. cloth.

A good practical work."—*Law Times*.

**Morgan and Wurtzburg's Treatise on the Law of Costs in**

the Chancery Division of the High Court of Justice.—Being the Second Edition of Morgan and Davey's Costs in Chancery. With an Appendix, containing Forms and Precedents of Bills of Costs. By the Right Hon. GEORGE OSBORNE MORGAN, one of Her Majesty's Counsel, Her Majesty's Judge Advocate General, and E. A. WURTZBURG, Esq., Barrister-at-Law. Demy 8vo. 1882. Price 30s. cloth.

"It is well arranged, accurate, and terse. . . . The standard authority on the subject."—*Solicitors' Journal*.

**Greenwood's Manual of the Practice of Conveyancing.**

showing the present Practice relating to the daily routine of Conveyancing in Solicitors' Offices. To which are added Concise Common Forms and Precedents in Conveyancing. *Seventh Edition*. With new Precedents, including Agreements under the Solicitors Remuneration Act, 1881. Including a Supplement written with special reference to the Acts of 1882; and an Appendix, comprising the Order under the Solicitors Remuneration Act, 1881, with Notes thereon. Edited by HARRY GREENWOOD, M.A., of Lincoln's Inn, Esq., Barrister-at-Law. Demy 8vo. 1882. Price 16s. cloth.

\* \* \* The Supplement may be had separately. Price 2s. net.

"One of the most useful practical works we have ever seen."—*Undermaur's Law Student's Journal*.

\* \* See also Catalogue at end of this Work.

STEVENS AND SONS, 119, CHANCERY LANE, LONDON, W.C.

**Sichel and Chance's Discovery.**—The Law relating to Interrogatories, Production, Inspection of Documents, and Discovery, as well in the Superior as in the Inferior Courts, together with an Appendix of the Acts, Forms and Orders. By WALTER S. SICHEL, M.A., and WILLIAM CHANCE, M.A., Esqrs., Barristers-at-Law. Demy 8vo. 1883. Price 12s. cloth.  
"The work will we think be very useful in practice, and may be confidently recommended for use in judges' chambers."—*Law Times*, April 4, 1883.

**Marsden's Rule against Perpetuities.**—A Treatise on Remoteness in Limitations; with a chapter on Accumulation and the Thelluson Act. By REGINALD G. MARSDEN, Esq., Barrister-at-Law. Demy 8vo. 1883. Price 16s. cloth.

"Mr. Marsden's work is entitled to be called a new one both in treatment and in design. He has handled a difficult subject with intelligence and clearness."—*Law Times*.

**Sutton's Tramway Acts of the United Kingdom.**—With Notes on the Law and Practice, an Introduction including the Proceedings before the Committees, Decisions of the Referees with respect to Locus Standi, and a Summary of the Principles of Tramway Rating. With an Appendix containing the Standing Orders of Parliament, Rules of the Board of Trade relating to Tramways, &c. Second Edition. By HENRY SUTTON, B.A., assisted by ROBERT A. BENNETT, B.A., Barristers-at-Law. Demy 8vo. 1883. Price 15s. cloth.

"The book is exceedingly well done, and cannot fail not only to be the standard work on its own subject, but to take a high place among legal text-books."—*Law Journal*.

**Fithian's Bills of Sale Acts, 1878 and 1882:** with an Introduction and Explanatory Notes, showing the changes made in the Law with respect to Bills of Sale, with Rules. By EDWARD W. FITHIAN, Esq., Barrister-at-Law (Draftsman of the Bill of 1882). Royal 12mo. 1882. Price 5s. cloth.

"We do not doubt that Mr. Fithian's book will maintain a high place among the most practically useful editions of the Bills of Sale Acts, 1878 and 1882."—*Law Magazine*.

**Smith's Married Women's Property Act, 1882;** with an Introduction and Critical and Explanatory Notes, and Appendix containing the Married Women's Property Acts, 1870 and 1874, &c. By H. ARTHUR SMITH, Esq., Barrister-at-Law, Author of "The Principles of Equity." Royal 12mo. 1882. Price 5s. cloth.

"A careful and useful little treatise . . . concise and well arranged."—*Solicitors' Journal*.

**Whiteway's Hints to Solicitors.**—Being a Treatise on the Law relating to their Duties as Officers of the High Court of Justice; with Notes on the Recent Changes affecting the Profession; and a *valde necesse* to the Law of Costs. By A. R. WHITEWAY, M.A., of the Equity Bar and Midland Circuit. Author of "Hints on Practice." Royal 12mo. 1883. Price 6s. cloth.

"He writes tersely and practically, and the cases he gives, if not exhaustive of the subject, are numerous and pithily explained. The book will altogether be found of great practical value."—*Law Journal*.

**Cunynghame's Treatise on the Law of Electric Lighting;** with the Acts of Parliament, and Orders of the Board of Trade, a Model Provisional Order, and a set of Forms; to which is added a description of the principal apparatus used in Electric Lighting, with Illustrations. By HENRY CUNYNGHAME, Barrister-at-Law, late Royal Engineers. Demy 8vo. 1883. Price 12s. 6d., cloth.

**Wilson's Mercantile Handbook of the Liabilities of Merchant, Shipowner and Underwriter on Shipments by General Vessels.** By ALEXANDER WILSON, Solicitor and Notary. Royal 12mo. 1883. Price 6s. cloth.

**Smith's Practical Exposition of the Principles of Equity.** Illustrated by the Leading Decisions thereon, for the use of Students and Practitioners. By H. ARTHUR SMITH, M.A., LL.B., of the Middle Temple, Esq., Barrister-at-Law. Demy 8vo. 1882. Price 20s. cloth.

"We must again state our opinion that this is a really remarkable book, containing in a reasonable space more information, and that better arranged and conveyed than almost any other law book of recent times which has come under our notice."—*Saturday Review*, July 8, 1882.

**Fry's Treatise on the Specific Performance of Contracts.** By the Hon. Sir EDWARD FRY, one of the Judges of the High Court of Justice. Second Edition. By the Author and W. DONALDSON RAWLINS, Esq., M.A., Barrister-at-Law. Royal 8vo. 1881. Price 11. 16s. cloth.

\* \* A Catalogue of Modern Law

4, price 6d. post free.

